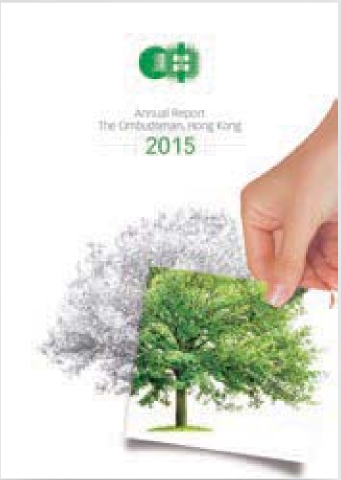
Annual Report
The Ombudsman, Hong Kong

2015





The Ombudsman, Hong Kong Annual Report 2015

This year's design concept comprises a collage of monochrome sketch and colour photograph, with the sketch giving an outline of a tree and the photograph revealing its green foliage in vibrant colours. The hand holding the photograph signifies the role and functions of the Office of The Ombudsman in seeking truth from facts, examining and analysing cases in detail, and conducting thorough investigation in an objective manner before making recommendations for improvement in Hong Kong's public administration, with a view to ensuring its accountability, openness and service quality.



Vision

To ensure that Hong Kong is served by a fair and efficient public administration which is committed to accountability, openness and quality of service

Mission

Through independent, objective and impartial investigation, to redress grievances and address issues arising from maladministration in the public sector and bring about improvement in the quality and standard of and promote fairness in public administration

Functions

The Ombudsman should serve as the community's watchdog to ensure that:

- Bureaucratic constraints do not interfere with administrative fairness
- Public authorities are readily accessible to the public
- Abuse of power is prevented
- Wrongs are righted
- Facts are pointed out when public officers are unjustly accused
- Human rights are protected
- The public sector continues to improve quality and efficiency

Values

- Maintaining impartiality and objectivity in our investigations
- Making ourselves accessible and accountable to the public and organisations under our jurisdiction
- According the public and organisations courtesy and respect
- Upholding professionalism in the performance of our functions

Performance Measures

- Speed of case work
- Complainants' level of satisfaction with case handling
- Redress obtained
- Recommended improvement measures committed to and/or implemented
- Non-repetition of complaints

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Glossary of Terms

Complainants Charter

History in Brief

1988

20 July

The Commissioner for Administrative Complaints ("COMAC") Bill was passed by the Legislative Council ("LegCo")

1989



First Commissioner Mr Arthur Garcia, JP

1 February

The COMAC Ordinance was enacted First Commissioner Mr Arthur Garcia, JP assumed office

1 March

The Office of COMAC became operational with staff seconded from Government

15 November

COMAC became a member of the International Ombudsman Institute ("IOI")

1993

21 July

Legislative review completed, the COMAC (Amendment) Bill was introduced into LegCo

1994



Second Commissioner Mr Andrew So, SBS, OBE, JP

1 February

Second Commissioner Mr Andrew So, SBS, OBE, JP assumed office

24 June

The COMAC Ordinance was amended:

- to enable the public to lodge complaints directly, instead of by referral from LegCo Members
- to extend the jurisdiction to some major statutory bodies
- to empower the Commissioner to publish anonymised investigation reports
- to empower the Commissioner to initiate direct investigation

30 June

Advisers were appointed to provide expert advice and professional opinion

1 July

Chinese title of the Commissioner was changed to「申訴專員」and the Office to「申訴專員公署」

1995

1 March

Jurisdiction was extended to investigation into alleged breach of Code on Access to Information

23-25, 27 October

The Commissioner hosted the 15th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium

1996

1 March

Non-official Justices of the Peace ("JPs") were enlisted in a JPs Assistance Scheme

15-16 April

The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association ("AOA") and became a founding member

24 October

The Ombudsman was elected to the Board of Directors of the IOI

27 December

English titles were changed to "The Ombudsman" and "Office of The Ombudsman"

1997

1 April

Mediation service was launched as an alternative dispute resolution method

25 July

The Ombudsman's Awards were introduced to acknowledge public organisations handling complaints positively

1998

8 May

The Ombudsman was elected Secretary of the AOA

1999



Third Ombudsman Ms Alice Tai, GBS, OBE, JP

1 April

Third Ombudsman Ms Alice Tai, GBS, OBE, JP assumed office

22 July

The Ombudsman's Awards were extended to acknowledge public officers' contribution towards better quality services

2000

27 July

The Ombudsman's Awards were further extended to acknowledge public officers handling complaints professionally



The Ombudsman's Awards

2 November

The Ombudsman was elected to the Board of Directors of the IOI

2001

28 March

Telephone complaint service was introduced

19 December

The Ombudsman (Amendment) Ordinance 2001 came into operation:

- to establish The Ombudsman as a corporation sole with full powers to conduct financial and administrative matters
- to empower The Ombudsman to set terms and conditions of appointment for staff
- to adopt systems and processes separate from Government

2002

6 September

Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan

16 October

The Ombudsman was elected Secretary of the IOI

2004

1 April

Ms Alice Tai, GBS, OBE, JP started her second term (2004 – 2009) as The Ombudsman

10 September

The Ombudsman was re-elected as Secretary of the IOI

13 December

With the departure of the last civil service secondee, this Office was staffed by a workforce entirely appointed by The Ombudsman under The Ombudsman Ordinance

2005

24 October

A "Memorandum of Administrative Arrangements" ("MAA") was signed between the Director of Administration and The Ombudsman to set out the general principles and guidelines governing the administrative arrangements for this Office and working relationship with Government



Signing of MAA

28 November – 1 December

The Ombudsman hosted the 9th AOA Conference

2008

5-8 November

The Ombudsman hosted the Board of Directors Meeting of the IOI

2009



Fourth Ombudsman Mr Alan Lai Nin, GBS, JP

1 April

Fourth Ombudsman Mr Alan Lai Nin, GBS, JP assumed office

11 June

The Ombudsman was re-elected to the Board of Directors of the IOI

12 June

Ms Alice Tai, GBS, OBE, JP was awarded IOI Honorary Life Membership

2010

19 October

The Ombudsman was elected Treasurer of the IOI

2011



AOA Conference

8 December

The Ombudsman was re-elected Secretary of the AOA

2012

5-10 May

The Ombudsman hosted the Mid-term Board of Directors Meeting of the IOI

22-24 May

The Ombudsman coorganised the IOI Regional Training of Asia and Australasia & Pacific Regions with the Commission Against Corruption of Macao



IOI Regional Training

2014

1 April

Fifth Ombudsman Ms Connie Lau, JP assumed office



Fifth Ombudsman Ms Connie Lau, JP

2015

20 January

Mr Alan Lai, GBS, JP was awarded IOI Honorary Life Membership

30 March

As keynote speaker, The Ombudsman delivered her speech at the IOI/AOA International Seminar on “Ombudsman: Mechanism for the Fair Nation”



IOI/AOA International Seminar

The Ombudsman's Review



There is no better way to start my first Review as Ombudsman than expressing my immense gratitude to my predecessor, Mr Alan Lai, for handing over to me the Office on such a robust foundation and in such a healthy, vibrant state.

It is common knowledge that one cannot build a great building on a weak foundation. A solid foundation is essential for a solid structure. It is also a much appreciated legacy for those who have responsibility in not only maintaining its strength, but ensuring that it evolves as necessary with a changing environment.

Before I assumed my post of Ombudsman in April 2014, I noted that our Office had begun a process of evolution through promoting the use of mediation as an alternative to the conventional ways of handling complaints, namely, inquiry and full investigation. Even more notable and indeed widely acclaimed was its effort (by way of a full investigation on the Government's Code on Access to Information) to champion the principle of freedom of information.

Building on past successes of my predecessor, I took it upon myself to explore how to develop those two areas further.

On mediation, I asked myself the questions:

- When handling complaints, must we always go through the more time-consuming process of inquiry/ full investigation and eventually issue a letter/investigation report to the complainant after months, highlighting any maladministration on the part of the organisation (Government department/public body) concerned?

- Is that what all or most complainants really want?

The Ombudsman Ordinance provides that The Ombudsman may decide to deal with a complaint by the speedier process of mediation if the subject matter of the complaint involves no, or only minor, maladministration. Our trained officers act as impartial mediators to help the complainants and the organisation under complaint to arrive at a mutually acceptable solution to the problem. Surely, many complainants suffering from an organisation's delay in relieving their plight would welcome our prompt mediation for problem-solving, much more than a lengthy letter/report from our Office accounting for the incident and detailing the organisation's inadequacies.

It was, of course, not easy at first for my staff to convince complainants and organisations of the merits of mediation. Through their efforts in addressing the concerns of complainants and organisations, and through their persistent hard work, this year recorded a four-fold increase in the number of mediation cases to 138.

I should stress that this increase in the use of mediation was not at the expense of our mainstream investigation work. Quite the contrary, our endeavour has proved to be an effective triage measure – using mediation for quick resolution of complaint cases where appropriate, thereby saving manpower for full investigation on cases involving more serious maladministration and direct investigation for overhaul of organisations' systems and procedures. The numbers of full investigations and direct investigations this year stood at 314 and seven respectively, compared with 321 and six in 2013/14.

Resources and other circumstances permitting, I plan to further increase the number of direct investigations gradually in the years to come.

The previous direct investigation on access to information, mentioned above, was comprehensive and cogent, detailing a number of important recommendations. The Office will continue to closely monitor the Government's implementation of all the recommendations, in particular those relating to extending the Code on Access to Information to cover more public bodies and promoting public education on citizens' right of access to information.

Meanwhile, the Office has developed a dossier of major complaint cases relating to the Code for staff reference and training. We have also started to adapt that dossier for publication on our website so that public officers and the general public will soon be able to turn to it for reference.

So much for our new endeavours. In this day and age, we need to keep reminding the public of what we have to offer, lest our quiet efforts would fall into oblivion. Hence, as in previous years, we have advertised on the television, the radio and in newspapers, as well as with other media such as roadshows on public transport and exhibitions. The theme of the latest advertisement, "tai chi" (in local slang meaning "shirking of responsibility") and "say no to maladministration", was plain and appealing to the public, I acknowledge that the message, and for that matter, any criticisms that we levelled against organisations in the course of our work may, to some extent, have aroused unpleasant feelings among public officers.

Of course, it has never been our intention to stigmatise public officers or to sweepingly discredit their work. Indeed, The Ombudsman appreciates the diligence, professionalism and cooperation shown by public officers in responding to our inquiries and investigations. Our role is to be an impartial adjudicator of complaints, not an advocate for any particular party. Where complainants are found to be unreasonable, dishonest or vexatious, we do not hesitate to point out the truth.

While our inquiries and investigations inevitably add to the already heavy workload of organisations, such actions serve to either vindicate what they have done or identify areas for improvement which would help prevent recurrence of mistakes and complaints. As it turned out, the majority of complaints were found unsubstantiated, meaning that the organisations were exonerated after our independent and impartial inquiry/investigation. Had those cases been brushed aside, the organisations concerned would never have learnt about the grievances, justified or not, of the people they serve; and the complainants would have been deprived of an official explanation from the organisations. Worse still, the pent-up negative energy of grievances and frustration would sooner or later find its way to cause greater harm.

I hope public officers can appreciate the meaning and positive value of our intervention.

We will continue to publicise the role of The Ombudsman and promote a positive complaint culture. We will also reach out actively to organisations to enhance mutual understanding and cooperation. Feedback from stakeholders about any aspects of our work is of course, always welcome.

Connie Lau
The Ombudsman
31 March 2015



Directorate

Ms Connie Lau, The Ombudsman (Second from right)
Mr K S So, Deputy Ombudsman (Second from left)
Mr Tony Ma, Assistant Ombudsman (Left)
Mr Frederick Tong, Assistant Ombudsman (Right)

Chapters





– Chapter 1 –

Our Role, Jurisdiction and Powers



1.1 Established under The Ombudsman Ordinance ("the Ordinance"), Cap 397 of the Laws of Hong Kong, the Office of The Ombudsman functions as the city's independent watchdog of public administration. We investigate actions by Government departments and public bodies for administrative deficiencies and recommend remedial measures. We promote good public administration for responsive and responsible, fair and open governance.

Jurisdiction

1.2 The Ombudsman has powers to investigate complaints from aggrieved persons about maladministration by the Government departments and public bodies listed in Part I of Schedule 1 to the Ordinance (see **Annex 1**). We are always on the lookout, and maintain close contact with the Government, for possible additions to the Schedule.

1.3 Besides investigating complaints received, The Ombudsman may, of her own volition, initiate direct investigation into areas of suspected maladministration usually involving systemic problems or issues of significant public interest.

1.4 Section 2 of the Ordinance defines "maladministration" as inefficient, bad or improper administration, including: unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for others.

1.5 While some organisations such as the Hong Kong Police Force and the Independent Commission Against Corruption are not included in Part I of Schedule 1 to the Ordinance, they are nevertheless subject to our investigation with regard to cases of non-compliance with the Code on Access to Information[1]. These organisations are listed in Part II of Schedule 1 to the Ordinance (see **Annex 1**).



Matters Not for Investigation

1.6 The Ombudsman is prohibited by law from investigating certain kinds of matters. For example, cases related to legal proceedings or prosecution decisions, contractual and other commercial transactions, personnel matters and imposition or variation of conditions of land grant are out of bounds. A full list of such prohibitions is at **Annex 2**.

[1] The Code was introduced in 1995 to make available to the public as much Government-held information as possible, unless there are valid reasons – related to public, private or commercial interests – to withhold it. It applies to all Government departments, the Hong Kong Monetary Authority and the Independent Commission Against Corruption.

1.7 The Ordinance does not preclude us from investigating **policy** matters, but if a policy has been made after a due process with wide public consultation, publicity and mandate, The Ombudsman would normally not treat the policy *per se* as a matter for investigation unless she thinks that there is grave injustice caused. Nevertheless, the way policies are formulated or implemented certainly falls within our ambit, and so does inaction or procrastination on the part of the organisation concerned in conducting a review of such policies when they are found outdated or inequitable.

1.8 Similarly, our Office would normally not investigate an organisation's action or decision based purely on **professional judgement**. However, in reality, such cases of pure professional judgement are few and far between, as most of such actions/decisions involve, to some extent, managerial/administrative aspects, which definitely come within The Ombudsman's jurisdiction. Where necessary, we may consult members of our Panel of Advisers, which comprises experts with good standing in various fields (see **Annex 13**).



Restrictions

1.9 The Ordinance also prescribes other circumstances under which The Ombudsman shall not conduct an investigation. For example, the complainant has had knowledge of the subject of complaint for over two years, is anonymous, unidentifiable or not traceable, or is not the person aggrieved or a suitable representative of that person. Such restrictions are also detailed at **Annex 2**.

1.10 Nevertheless, in some cases, The Ombudsman has discretion whether or not to conduct, or discontinue, an investigation. A case may be taken up, for instance, if the complainant is able to explain satisfactorily why the complaint could not have been lodged within two years.

Powers of Investigation and Recommendation

1.11 Under the Ordinance, The Ombudsman has a wide range of investigative powers: conducting inquiries, obtaining information and documents, summoning witnesses and inspecting premises of organisations under complaint.



1.12 While The Ombudsman's investigation shall not affect any action taken by the organisation under complaint or the organisation's power to take further action with respect to any decision which is subject to the investigation, The Ombudsman may report her findings and make recommendations for redress or improvement to the organisation.

1.13 Where an organisation does not adequately act upon her recommendation, The Ombudsman may submit a report to the Chief Executive of the Hong Kong Special Administrative Region. Where a serious irregularity or injustice is found, The Ombudsman may make a further report to the Chief Executive. In such event, the Ordinance requires that a copy of the report be laid before the Legislative Council within one month or such longer period as the Chief Executive may determine.

Our Procedures

Complaint Handling

Modes of Complaint

2.1 Complaints may be lodged in person, by email, by fax, or by mail, postage-free if our complaint form is used. Complaints may also be made by telephone for simple cases involving not more than two organisations.



2.2 We can communicate with complainants by email. Our previous practice was to password-protect the documents we sent to them. For greater convenience and efficiency, we now communicate with complainants by open email if they so prefer, but we shall remind them of the security risk involved. We shall continue to require complainants to provide us with their postal address for traceability (see **para. 1.9**) because an email address does not provide sufficient information on the whereabouts of the sender.

Complainants' Representation

2.3 For a complaint made by an individual, he/she should normally be the person aggrieved unless that person is unable to act for himself/herself (see **para. 1.9**). For a complaint made on behalf of a body corporate, the complainant has to satisfy The Ombudsman that the body corporate has authorised him/her as its representative. The Ombudsman will allow legal representation if she considers it justified.

Topical Complaints

2.4 From time to time, we receive complaints from more than one person, more or less concurrently, in respect of a particular current issue or hot topic. We term such cases "topical complaints" to distinguish them from complaint cases on disparate issues or topics, so as to reflect more accurately our caseload and the frequency of complaints against different organisations.

Assessment

2.5 Our Assessment Team usually screens all incoming complaints within a day or two to examine whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. The focus of assessment is on the substance and merits of the complaint, not quantity or level of persistence. The team will seek further information or clarification from the complainant if necessary.

2.6 We operate a Duty Officer Scheme under which our investigation officers meet new complainants face-to-face to obtain essential information on their cases for assessment and to brief them on our procedures and restrictions.



2.7 Cases "screened in" go to one of our six investigation teams for inquiry, resolution by mediation or full investigation. For the rest, a recommendation will be made to The Ombudsman for not pursuing the case.

2.8 Where The Ombudsman decides not to pursue a case, we aim to notify the complainant of the reason(s) within 15 working days (see **Annex 3.11** for our performance pledges). Even with complaints "screened out" because the complainants are anonymous, unidentifiable, not traceable or not personally aggrieved, we do not dismiss them lightly but may examine if any serious or systemic maladministration or significant issue was involved. This may prompt topics for direct investigation assessment or even direct investigation (see **paras. 2.22 – 2.26**).

2.9 In some cases not pursued, as the complainants may be in need of services from some Government departments or public bodies, we take it upon ourselves to advise them where and how to get such services.

2.10 On appeal by complainants of cases "screened out", the Assessment Team will "re-assess" such cases and present its recommendation to The Ombudsman for decision as to whether the case should be re-opened for follow-up.



Inquiry

2.11 The Ordinance provides that for the purposes of determining whether to undertake a full investigation (see **paras. 2.17 – 2.20**), The Ombudsman may conduct such "preliminary inquiries" as she considers appropriate. In the interest of complainants, we often use this procedure to resolve complaint cases of a general nature more speedily, without unnecessarily resorting to the more time-consuming action of full investigation. For simplicity, we call this "inquiry".

2.12 Sometimes, substantial relevant information comes with the complaints may be available in our recent case files or in current publications of the organisation under complaint. It may suffice for us to study and analyse such information and then give the complainant a concluding reply.

2.13 In other cases, we ask the organisation under complaint to respond to us and, if we see fit, to the complainant in parallel. We will examine such response, the complainant's views on it, if applicable, together with any other relevant information or evidence that we may have collected. We will, in conclusion, present our findings to the complainant and make suggestions to the organisation for remedy or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.

Mediation

2.14 Alternatively, with the consent of both the complainant and the organisation under complaint, The Ombudsman may try to settle a case by mediation. This dispute resolution method is suitable for cases involving only minor or no maladministration. The two parties meet voluntarily to explore a mutually acceptable solution. Our investigation officers trained in mediation act as impartial mediators.

2.15 For efficiency and convenience to the parties concerned, we also often conduct mediation by telephone and subsequently confirm in writing the agreement reached by the parties.



2.16 If mediation fails to resolve the matter, or the complainant requests to reactivate his complaint, our Office will assign another investigation officer to conduct an inquiry or a full investigation afresh. This is to ensure objective processing not influenced by prior knowledge from the mediation process.

Full Investigation

2.17 For complex cases which appear to involve issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, or simply require deeper and fuller probing, our Office will conduct a full investigation.

2.18 This is an extensive and intensive process of probing to establish the facts. Besides examining documents, we may summon witnesses, counter-check data with the complainant, conduct site inspections and consult our Advisers.

2.19 We will also invite comments on our preliminary observations from any organisation or individual that may be criticised or adversely affected by the investigation report. When finalised, the report will be presented to the complainant for information and to the head of the organisation concerned for implementation of our recommendations.

2.20 In our investigation reports, we usually conclude complaint cases as "substantiated", "partially substantiated" or "unsubstantiated". In some other cases, although the specific allegations in the complaint are unsubstantiated, other significant acts or aspects of maladministration are identified. Such cases are concluded as "unsubstantiated but other inadequacies found" (formerly termed "substantiated other than alleged").

Review

2.21 Complainants dissatisfied with our findings or conclusions may seek a review of their cases by providing supporting arguments and/or information. Such requests are first assessed by the Assistant Ombudsman concerned, who will consider the complainant's grounds for review and whether the request should be entertained; if so, he will assign a suitable investigation officer to re-examine the case in detail and seek further information or comments from the organisation under complaint as necessary. A submission will eventually be made to The Ombudsman, via the Deputy Ombudsman, to determine whether our original conclusion should be upheld or varied.



Direct Investigation

2.22 The Ombudsman's power to conduct direct investigations ("DIs") in the absence of complaints enables her, where warranted, to pursue issues raised by people not personally aggrieved (see **para. 2.8**), as well as to look at matters at a macro level as opposed to individual cases. Essentially, the latter means examining systems with systemic or widespread deficiencies. A DI may be prompted by significant topical issues of community concern, implementation of new or revised Government policies or repeated complaints on particular matters.



DI Assessment

2.23 Before deciding whether or not to launch a DI against an organisation, we may conduct an initial assessment ("DI assessment"). For this purpose, we may research public information from annual reports and websites, legislation and media reports, or seek information from the organisation directly. If our assessment points to the need for further study, we will formally notify the head of the organisation and initiate a DI.

2.24 Where our DI assessment finds no significant maladministration or the organisation concerned has made improvement, we will simply conclude our study and offer our findings to the organisation. Where appropriate, we make suggestions for improvement.

Investigation Methodology

2.25 The procedures for DI are akin to those for investigation into individual complaints. Unlike the latter, however, we may declare publicly our initiation of DIs to invite views on the subject from relevant sectors and experts as well as the community at large.

2.26 In the course of our investigation, we will, if necessary, discuss our preliminary findings with senior officers of the organisation under investigation. Such exchanges are useful in clarifying points of doubt and furthering insight into the issues.



Implementation of Recommendations

2.27 In all our reports, whether on complaint investigation or DI, our recommendations to the organisation concerned aim to make for more open and client-oriented service, transparent and accountable administration, more efficient processes and effective practices.

2.28 Heads of organisations have an obligation to report at regular intervals their progress of implementation of our recommendations. We certainly also consider it our duty to monitor the same.

Secrecy Requirement and Publication of Reports

2.29 The Ombudsman, staff and Advisers are all bound by law, under penalty of a fine and imprisonment, to maintain secrecy on all matters that come to our knowledge in the exercise and execution of our functions.

2.30 In this connection, it is our general practice not to respond to any question from third parties on individual complaints. However, where it is in the public interest to do so, The Ombudsman may publish at media conferences DI reports and anonymised reports on complaint investigation, or otherwise answer media enquiries on such investigations, again hiding names and other personal data.

2.31 We also place all our DI reports on our webpage for public reference.

Access to Information

2.32 Subject to the secrecy requirement mentioned in **para. 2.29**, our Office adopts a policy of openness and transparency. We handle requests for access to information of our Office along the lines of Government's Code on Access to Information (see **Note 1** of Chapter 1).

2.33 Any person not satisfied with our Office's decision on his/her request for information may seek a review, which will be personally considered by The Ombudsman.





– Chapter 3 –

Performance and Results

Enquiries and Complaints Processing

3.1 During the year under report we received 5,339 complaints, including 428 secondary cases[1] in *topical complaints*. The corresponding figures last year were 5,624 and 398 respectively. The number of enquiries received this year was the highest in the past five years, at 12,940.



Table 3a

Enquiries and Complaints Received

Year	Enquiries	Complaints	
		Total	Excluding topical complaints
2010/11	12,227	5,339	4,712
2011/12	12,545	5,029	4,849
2012/13	12,255	5,501	5,263
2013/14	12,767	5,624	5,226
2014/15	12,940	5,339	4,911

3.2 There were 902 complaint cases brought forward from last year. Together with the 5,339 cases received this year, we had a total of 6,241 complaints for processing this year.

3.3 A breakdown on the number of enquiries and complaints received and processed in the past five years is given in **Annex 3.1**.

Topical Complaints



3.4 The topical complaints received this year gave rise to 428 secondary cases. The largest group of topical complaints (with 118 secondary cases) was against the double parking of minibuses at a certain location. The next two largest groups (with 63 and 61 secondary cases separately) related to a survey conducted by the Consumer Council on the satisfaction of out-bound tourists and a consultation exercise conducted by the Lands Department in respect of a development project in Tai Po. Two further significant groups of complaints (with 54 and 43 secondary cases separately) concerned alleged delay in the construction by the Housing Department of a covered footbridge and an incident of alleged violent behavior of a staff member of the Planning Department.

Mode of Lodging Complaints

3.5 The preference for lodging complaints by email (which includes complaints by the e-complaint form through our official website) continued to grow, comprising 49.0% (2,617 cases) of all the complaints received, compared with 43.7% last year. Letters through post was the second most favoured mode, with 918 (17.2%) complaints.

[1] For counting purposes, each group of topical complaints is recognised by a "leader case" and the rest are taken as "secondary cases".

Table 3b

Mode of Lodging Complaints

Mode	2010/11	2011/12	2012/13	2013/14	2014/15
In person	634	573	769	633	527
In writing –					
by complaint form	544	518	621	332	361
by letter through post	882	947	752	1,066	918
by fax	766	657	540	467	485
by email	1,954	1,783	2,144	2,455	2,617
By telephone	559	551	675	671	431
Total	**5,339**	**5,029**	**5,501**	**5,624**	**5,339**

Complaints Handled

3.6 During the year we reviewed and revised our classification of complaint handling. In the past we named as "non-pursuable" all cases falling outside our jurisdiction, restricted by the Ombudsman Ordinance from handling, withdrawn by the complainant, discontinued or not undertaken by this Office for reasons such as *sub judice* or lack of *prima facie* evidence. Since all such cases were concluded only after our careful assessment, we consider "assessed and closed" a more appropriate classification. Besides, some cases which are not undertaken by us for the reason of lacking in *prima facie* evidence are in fact complaints in which we have fully examined the complainant's case with our conclusions explained to the complainant. We have indeed pursued and concluded these cases by way of inquiry and therefore they should be so classified. The statistics in **Annex 3.1**, including those of the past four years, are presented according to the new classification.

3.7 Based on the new classification, we completed processing 5,373 (86.1%) of all cases received during the year and those brought forward from last year. Of those completed we pursued 3,025 (56.3%) by way of inquiry, full investigation or mediation. The rest (2,348, 43.7%) were closed after assessment either because the matters under complaint were outside our jurisdiction or because we were legally restricted from pursuing them further.

3.8 Of those pursued and completed, 85.0% were concluded by inquiry (87.9% last year), 10.4% by full investigation (10.8% last year) and 4.6% by mediation (1.3% last year) (see **Table 3c**). The significant increase in the number of complaints handled by mediation was the result of our stepped up efforts in this, which is further discussed in **Chapter 4**. Among those assessed and closed, over half were due to the fact that the matters under complaint were legally out of bounds (**Table 3d**).

Table 3c

Complaints Pursued and Concluded in 2014/15

	No. of Cases	Percentage
By inquiry	2,573	85.0%
By full investigation	314	10.4%
By mediation	138	4.6%
Total	**3,025**	**100.0%**

Table 3d

Complaints Assessed and Closed in 2014/15		
	No. of Cases	Percentage
Insufficient ground to pursue	1,091	46.5%
Legally bound	1,257	53.5%
Total	**2,348**	**100.0%**

Major Causes for Complaint

3.9 Based on the allegations made by the complainants, the top five causes for complaint were:

- error, wrong decision or advice (32.3%);
- ineffective control (14.9%);
- delay/inaction (14.3%);
- lack of response to complainants/enquirers (7.1%); and
- faulty procedures (4.4%).

The first four were the same as last year in terms of order but "faulty procedures" replaced "poor staff attitudes" as the fifth major cause this year. More details are given in **Annex 3.3**.

3.10 Based on full investigations into cases, the top five forms of maladministration substantiated or partially substantiated were:

- error, wrong advice or decision (31.0%);
- delay/inaction (21.0%);
- ineffective control (18.0%);
- lack of response/reply to complainant or enquirer (12.0%); and
- failure to follow procedures (9.0%).

They were the same five as last year, though their order changed, with "error, wrong decision or advice" now at the top, replacing "ineffective control", and other alterations. More details are given in **Annex 3.8**.

Most Popular Targets of Complaint

3.11 The league of the "top ten" organisations most frequently complained against based on the number of complaints we pursued and concluded during the year (**Annex 3.6**) reflected the most popular targets of complaint. The first seven were the same as in last year's league, though their ranking varied. The first two, namely, the Housing Department and Food and Environmental Hygiene Department, swapped their positions, whereas the Lands Department, Transport Department and Buildings Department also changed their relative positions as the third, fourth and fifth in the league. Topical complaints were a major factor which caused these changes. Also owing to a large group of topical complaints, the Consumer Council joined the league for the first time, coming in the eighth position. The Water Supplies Department and the Immigration Department appeared in the league as the ninth and tenth organisation, while the Home Affairs Department and Hospital Authority dropped out from this year's league.



Outcome of Investigations and Inquiries

3.12 We concluded 314 complaints by full investigation this year, including 125 secondary cases of a topical complaint. Among them 79 (25.2%) were *substantiated*, *partially substantiated* or *unsubstantiated but other inadequacies found*. The outcome of our full investigations is summarised in **Table 3e**.

Table 3e

Substantiation Rates of Complaints Concluded by Full Investigation

Classification	No. of Complaints	Percentage
Substantiated	25	8.0%
Partially substantiated	47	15.0%
Unsubstantiated but other inadequacies found	7	2.2%
Unsubstantiated	232	73.9%
Inconclusive	1	0.3%
Withdrawn/discontinued	2	0.6%
Total	**314**	**100.0%**

3.13 Among the 2,573 inquiry cases concluded, inadequacies or deficiencies were found in 474 (18.4%).

Direct Investigation



3.14 During the year we completed seven direct investigations. The issues examined included the management of patient records; enforcement actions against street obstruction by shops; regulation of guesthouses; monitoring of eligibility of existing public housing tenants; disclosure of teachers' registration status; recovery of debts under the non-means-tested loan scheme; and regulation of refrigerants. Six direct investigations were in progress at the end of the year.

3.15 We completed 16 direct investigation assessments this year. The issues studied covered subjects such as records of underground utility facilities; arrangement for follow-up appointments for paramedical services during absence of the healthcare personnel; regulation of performing activities in public parks; and enforcement actions by various government departments against matters such as unauthorised building works, illegal occupation of government land and unlicensed restaurants and irregularities of licensed restaurants.

3.16 A list of the direct investigations and selected direct investigation assessments completed is in **Annex 5**.

Recommendations

3.17 We made 178 recommendations on completion of 314 full investigations and 40 recommendations in seven direct investigations. Of the total 218 recommendations, 186 (85.3%) have been accepted by the organisations for implementation and 31 (14.2%) were still under consideration as at 31 March 2015.

3.18 We also made 41 suggestions for improvement on conclusion of inquiry cases. A breakdown, by target organisations, of the number of suggestions made is in **Annex 3.9**.

Our Performance

3.19 As in previous years we arranged all talks and answered all enquiries by telephone and in person within our pledged time frames. For enquiries in writing, we answered 98.0% of them in five working days and 2.0% in six to ten working days. On acknowledging receipt of complaints, we issued acknowledgement within five working days in 99.3% of all complaints received.

3.20 On complaint processing, we concluded 90.9% of the cases falling outside jurisdiction or under restriction within ten working days, as compared with the service pledge of not less than 70%. There was 0.5% of the cases (the lowest in the past five years) which exceeded the target timeframe of 15 working days (see **Table 3f**). For other cases we concluded 86.3% within three months, as compared to the service pledge of not less than 60%. There were only 0.6% of the cases not concluding within our pledge timeframe of six months, for reasons such as case complexity, new developments of the case in the mid-stream of the process and delay of organisations under complaint in tendering their replies to us (see **Table 3g**).

3.21 Our performance pledges and record of achievement are listed in **Annex 3.11**.

Table 3f

Processing Time for Cases Outside Jurisdiction or Under Restriction

Year	Response Time		
	Within 10 working days (target: >70%)	Within 11-15 working days (target: <30%)	More than 15 working days
2010/11	83.4%	14.5%	2.1%
2011/12	89.2%	9.3%	1.5%
2012/13	89.5%	8.7%	1.8%
2013/14	88.9%	9.7%	1.4%
2014/15	90.9%	8.6%	0.5%

Table 3g

Processing Time for Other Cases Concluded

Year	Response Time		
	Less than 3 months (target: >60%)	Within 3-6 months (target: <40%)	More than 6 months
2010/11	74.5%	24.6%	0.9%
2011/12	79.3%	19.8%	0.9%
2012/13	86.3%	12.8%	0.9%
2013/14	81.7%	17.2%	1.1%
2014/15	86.3%	13.1%	0.6%

Overview

3.22 The rising trend of complaints eased this year, though the number of topical complaints continued to increase, quite a few appeared to be triggered by social issues. We maintained the high level of efficiency in the delivery of our services. In complaint handling, we made special efforts to promote mediation as a means to resolve complaints that involved no or little maladministration but the complainant felt genuinely aggrieved. As a result the number of cases successfully mediated was 3.6 times that of the last year, which had already been a record high. Meanwhile, we spared no efforts in conducting full investigations into complaints where in-depth probing was called for.

3.23 During the year we also reviewed the classification of our complaint handling and, correspondingly, the statistical presentation, to better reflect the nature of our input in this area of our work.



– Chapter 4 –

Reward and Challenge

Enhancing Quality Administration



4.1 An important way for our Office to assist public organisations to improve their administration is by making recommendations to them on conclusion of our inquiries into complaints. We monitor their implementation of our recommendations until action is completed. The measures introduced by organisations in response to our recommendations came within the following broad categories:

(a) measures to ensure clarity, consistency or efficiency in operation;
(b) better arrangements for inter- and intra-departmental coordination;
(c) measures for better public enquiry/complaint handling;
(d) measures for better client services;
(e) measures for more effective regulation or control;
(f) clearer and more reasonable rules;
(g) clearer and more timely information to the public; and
(h) training for staff.

4.2 In **Annex 10** are some examples of the improvement measures, which illustrate the wide range of areas of administration covered.

Mediating Disputes

4.3 During the year under report, we heightened our effort to promote resolution of suitable complaint cases by way of mediation, with very encouraging results. A total of 25 organisations, as compared to 11 last year, voluntarily participated, showing that more organisations were receptive to resolving complaints by mediation (**Table 4a**). They reached agreement with the complainants in 138 cases, a sharp increase as compared to the 38 cases of the previous year. The top three organisations with the largest number of cases successfully concluded by mediation were the Housing Department (39 cases, or 28.3% of all cases concluded by mediation), the Food and Environmental Hygiene Department (20 cases, 14.5%), and the Buildings Department (14 cases, 10.1%).

Table 4a

Successfully Mediated Cases by Organisation (2014/15)

Organisation(s)	No. of Cases
Housing Department	39
Food and Environmental Hygiene Department	20
Buildings Department	14
Transport Department	13
Social Welfare Department	9
Post Office	8
Leisure and Cultural Services Department	5
Agriculture, Fisheries and Conservation Department	4
Lands Department	4
Judiciary Administrator	3
Chief Secretary for Administration's Office (1823), Highways Department, Mandatory Provident Fund Schemes Authority, Working Family and Student Financial Assistance Agency (each with 2 cases)	8

Successfully Mediated Cases by Organisation (2014/15)	
Organisation(s)	**No. of Cases**
Consumer Council, Education Bureau, Electrical and Mechanical Services Department, Environmental Protection Department, Fire Services Department, Government Property Agency, Commerce and Economic Development Bureau (Innovation and Technology Commission), Home Affairs Department, Hong Kong Monetary Authority, Privacy Commissioner for Personal Data, Rating and Valuation Department (each with 1 case)	11
Total	**138**

4.4 In terms of nature of complaint, most cases successfully mediated concerned complaints about delay in action (47 cases, 29.4%), followed by complaints about errors or wrong advice/decisions (31 cases, 19.4%) and ineffective control (27 cases, 16.9%) (**Table 4b**). As regards the subject matters under complaint, they ranged from public housing estate management and water seepage to postal delivery services, and from rodent control and stray dog nuisance to length of pedestrian green light duration and social security issues.



Table 4b

Successfully Mediated Cases by Nature of Complaint (2014/15)	
Nature of Complaint	**No. of Cases**
Delay	47
Error, wrong advice/decision	31
Ineffective control	27
Lack of response to complaint	20
Poor staff attitude (rudeness, unhelpfulness)	13
Faulty procedures	8
Failure to follow procedures	7
Negligence, omissions	5
Disparity in treatment, unfairness	1
Others	1
Total	**160**

* One complaint case may have more than one nature of complaint.

4.5 The modes of mediation adopted included face-to-face meetings for more complex cases and telephone mediation for simpler ones. The average processing time was about 17 days, with about half of the cases completed within two weeks. In some cases, the dispute between the complainant and the organisation under complaint had lasted for over 10 to 12 months. After our intervention, the matter was settled within a few weeks or even a few days.



4.6 We sent out questionnaires to the participating parties on successful conclusion of the cases to obtain their feedback on the process. Among those who had returned the questionnaire, 94.8% of the complainants and all of the organisations considered the process to have achieved what they wanted. All were satisfied with the work of our mediators. Eight complainants and eight organisations gave additional comments, which were all positive and encouraging. Almost all showed appreciation of the speed with which the dispute was resolve.

4.7 Of the six cases not successfully mediated, all were mainly due to the fact that the complainants were not satisfied with the organisations' explanations of their acts under complaint. These cases were subsequently handled by way of inquiry.

Apology in Complaint Resolution

4.8 We encourage public organisations to adopt a more open mind towards making of apologies. Among the 3,025 complaint cases we handled, 275 (9.1%) had apologies tendered by the organisation under complaint, including 253 cases (92%) in which the organisations tendered apologies after our intervention. It was also noted that, among the cases successfully resolved by mediation, apologies were tendered in 12.

Transparent Government and Access to Information



4.9 Open and transparent government is an important element of good governance. In the absence of legislation on freedom of information, the Government Code on Access to Information ("the Code") is the only instrument currently available whereby the Government commits itself to transparency and subjects itself to the supervision of an independent office, namely The Ombudsman. Empowered by The Ombudsman Ordinance ("the Ordinance"), we investigate, with or without complaints, into matters concerning non-compliance with the Code.

4.10 However, the Code is applicable to only Government departments and a few named Government agencies. For other public organisations, unless they voluntarily adopt the Code, the Code does not apply automatically to them even though they are listed in Schedule 1 to the Ordinance and hence come under our jurisdiction. We do receive from time to time complaints against these organisations for unreasonable refusal of requests for access to information. For organisations which have adopted the Code, we would examine their practices under complaint with reference to specific provisions of the Code; while for organisations which have not adopted the Code, we would examine their practices according to the following principles in line with the spirit of the Code, namely, whether the practice:

- supports the spirit of transparency and disclosure and allow non-disclosure only in specified circumstances and on justifiable grounds;
- stipulates reasonable response times for requests for information;
- requires, where a request is to be refused, the requester to be informed of the refusal and the reason for it; and
- provides for a reasonable mechanism for the requester to seek a review of the organisation's decision in respect of his information request.

4.11 We have since 1 April 2014 compiled relevant statistics on scheduled public organisations not covered by the Code, in addition to those covered by the Code.

Government departments or agencies covered by the Code



4.12 During the year, we received 45 Code complaints, compared to 78 last year. We cannot say for certain if the decrease in the number of complaints received suggests general improvement in handling access-to-information requests by Government departments and agencies. We would continue to monitor the statistics in the next few years.

4.13 We concluded a total of 54 cases (including 15 cases carried forward from last year), with faults found in 22 of them. Twelve cases involved unjustifiable refusal, wholly or partly, or imposing unnecessary conditions for provision of the information requested. A notable misused reason for refusal to provide information was confidentiality of third party information. In some cases the request was refused when no attempt had been made by the organisation to seek the relevant third party's consent. In some other cases Government departments inappropriately or wrongly regarded an agent contracted to perform the departments' functions as a third party for purposes of the Code. As it turned out, the agent was indeed under contractual obligation to provide information to the department to facilitate the latter to handle enquiries and complaints. Apart from the above, procedural defects were identified in many cases, for instance, failure to meet target response time and to inform the requester of the reason for refusal and the appeal/complaint channels in case of refusal.

Organisations not covered by the Code

4.14 We received nine complaints against five organisations not covered by the Code for refusal of access-to-information requests, with four cases against the Hospital Authority, two against the Hong Kong Housing Society and one each against the Privacy Commissioner for Personal Data, the Urban Renewal Agency and the Mandatory Provident Fund Authority. We completed eight cases during the year, with faults found in four cases.

4.15 It was noted that, for organisations which have voluntarily followed the Code, their staff were generally unfamiliar with the Code's requirements, especially regarding the acceptable grounds for refusal as set out in Part 2 of the Code. "Internal documents" were often wrongly quoted as the reason for non-disclosure of information, which is not a reason mentioned in the Code.

Table 4c

Number of Access-to-Information Complaints Received in the Past Five Years

Year	No. of Complaints Received	
	Organisations covered by the Code	Organisations not covered by the Code#
2010/11	42*	–
2011/12	39*	–
2012/13	62*	–
2013/14	78	–
2014/15	45*	9

* The figures include cases (three each in 2010/11, 2012/13 and 2014/15, and four in 2011/12) not recognised as such complaints in the year when they were received but so classified on conclusion in the subsequent year.

Statistics for this category of cases only started to be kept from the year of 2014/15.

Issues Examined by Direct Investigations

4.16 During the year we completed examination of seven systemic issues in public administration by way of direct investigation ("DI"), covering areas concerning patient records, shop extensions, guesthouses, public housing eligibility, student loan schemes, disclosure of teacher registration status and regulation of refrigerants.

DI relating to patient records

4.17 The Hospital Authority ("HA") had an electronic platform whereby enrolled private doctors may access its patient records efficiently for the purpose of patient care. However, it was found that in some cases the private doctor could not obtain the records quickly because of HA's failure to deal with and remove quickly a "Yellow Flag" tagged to the record, an internal mechanism to signify that the accuracy of the patient record in question might be doubtful. Since commencement of the DI, HA initiated improvements to clear the Yellow Flag backlogs. We recommended further measures regarding release of records that could not be verified within a short time, more publicity for doctor-to-doctor communication, better communication with patients seeking release of their records and more effective communication between HA headquarters and HA hospitals.

DI relating to shop extensions



4.18 Shop extensions, or shops displaying and selling goods outside their premises, caused street obstructions, inconvenience and even danger to pedestrians. Our DI found that the several Government departments responsible for the control of such illegal activities, namely the Food and Environmental Hygiene Department, Lands Department and Buildings Department, were ineffective in their enforcement actions for reasons including a compartmental mentality and lack of accountability, unreasonable and ineffective strategies adopted in enforcement, lax enforcement and regulatory action taken, cumbersome enforcement procedures and difference in enforcement priorities between departments. We made recommendations for improvement in these areas, including in particular a recommendation for Government to appoint a lead department to tackle the problem of street obstruction by shops.

DI relating to guesthouses

4.19 Operation of guesthouses is regulated by the Office of the Licensing Authority ("OLA") under the Home Affairs Department ("HAD") but was often the subject of complaint for the dangers and nuisances caused by the guesthouses to other people living in the same building. This triggered our DI on the subject. During our investigation, HAD launched a public consultation exercise on the review of the regulatory regime. The DI report contained our comments and recommendations for HAD to consider. In particular, we considered it necessary for HAD to introduce improvement measures and legislative amendments to address the community's dissatisfaction for OLA to issue a licence even where operation of guesthouses was in violation of the deed of mutual covenant of the building in which the guesthouse was to be located. We also found OLA's enforcement action against unlicensed guesthouses very ineffective and urged HAD to further enhance OLA's investigation of unlicensed guesthouses by conducting more decoy operations.

DI relating to public housing eligibility



4.20 Public rental housing ("PRH") units are Government-subsidised rental accommodation provided by the Hong Kong Housing Authority ("HKHA"), through the Housing Department ("HD"), and Hong Kong Housing Society ("HKHS") for people of low means. However, in handling public complaints, we noted that some families simultaneously occupied two PRH units under HD and HKHS for years. Besides, some tenants who should have vacated their PRH units under existing regulations were allowed to continue residing in the same units. Our DI revealed gaps in the reporting and co-ordination system of the two organisations to identify dual tenancies, excessive tolerance in handling such cases by both organisations, undue flexibility of HD in enforcing the policy on granting of new tenancy, failure of HKHS to ensure use of its PRH units only for people of low means, absence of any mechanism by Government to monitor HKHS's PRH operations and the need for review of certain policies concerning granting separate tenancies to sitting tenants. A series of recommendations were made to address these inadequacies identified.

DI relating to student loan schemes

4.21 The Working Family and Student Financial Assistance Agency ("the Agency") administered a Non-means-tested Loan Scheme ("the Loan Scheme") for students who needed financial assistance but were unwilling to undergo or failed to pass the means test required for a separate finance scheme also administered by the Agency. Noting from complaints received and media reports that the Agency might have been lax in its debts recovery, resulting in over burdening of the indemnifiers, and that there might be conspiracies between some educational institutions and loan applicants to obtain loans by fraud, we conducted a DI to examine the procedures for approval of loan applications and recovery of debts under the Loan Scheme. The Loan Scheme comprised three sub-schemes, two providing loans to full-time students pursuing publicly-funded tertiary programmes or accredited self-financing post-secondary programmes, while the third to students pursuing specified part-time or full-time post-secondary/continuing and professional education courses. Our investigation revealed that the third sub-scheme, namely the Extended Non-means-tested Loan Scheme ("the Extended Scheme"), involved higher management risks and had the most serious problem of default on loan repayment. We also found that the Agency lacked effective deterrent measures against defaulters and had not done enough to verify the indemnifiers' intention to act as indemnifiers. We made a number of recommendations for the Agency to devise measures to reduce the credit risk of the Extended Scheme, to introduce deterrents for defaulters and to step up its efforts and enhance its capability to vet loan applications.

DI relating to disclosure of teacher registration status



4.22 It was all along the general practice of the Education Bureau ("EDB"), being the holder of the list of all registered teachers ("the List"), to reject requests from the public for access to the List on grounds of protecting the teachers' privacy. Noting from the media calls in the community for opening up the List for public inspection,

we conducted a DI to examine the reasonableness of the EDB practice. We noted in the course of our investigation that the EDB's reasons for the practice were mainly grounded on their beliefs about violation of certain requirements of the Personal Data (Privacy) Ordinance, lack of legal power of EDB to disclose information on teachers' registration status, existence of adequate guards against the employment of unfit or improper teachers in schools and potential problems resulting from opening up of the List. We examined all these arguments but were not convinced that they presented insurmountable hurdles. We considered EDB to have neglected the views of the public at large, particularly those of parents, and took the view that, on the broad principle of open and transparent public administration, EDB should respect the public's right to access the information. We recommended EDB to review its current practice in handling requests to access information on the registration status of individual teachers and to conduct an extensive public consultation exercise to confirm the public's aspiration for disclosure of the List.

DI relating to regulation of refrigerants

4.23 This DI was triggered by the incident of an explosion and consequent fire caused by some repairing work of the air-conditioning systems at a restaurant, which involved the use of flammable refrigerants. Our investigation revealed that, while there were indications that flammable refrigerants were being used by some in the air-conditioning industry, there was no specific legislation for its regulation. Besides, while four Government departments were responsible for different aspects of the regulatory function, namely the Environmental Protection Department, the Electrical and Mechanical Services Department, the Fire Services Department and the Labour Department, none assumed a leading or coordinating role, and there was disagreement between two departments over their jurisdictions. Our investigation found inadequacies in the existing regulatory mechanisms, in the departments' liaison with the trade, in publicity and education for the general public and in training for workers. There was also a lack of monitoring of trends in the use of flammable refrigerants, and of communication and coordination among the departments. We made recommendations for improvement in these areas, including *inter alia* the appointment of one department to take up the coordinating and leading role in the regulation of refrigerants and the establishment of a comprehensive and forward-looking mechanism to monitor the development of refrigerants and their use in Hong Kong.

Challenges from Parties

Re-assessment of Cases

4.24 All incoming complaints are first assessed as to whether we can or should take up in accordance with the provision of The Ombudsman Ordinance. If the complaints are legally out of bounds or otherwise inappropriate for us to investigate, they will be screened out. Complainants disagreeing with our decision may request to have their cases re-assessed.

4.25 During the year we received 326 requests for re-assessment, with 85 subsequently re-opened for inquiry.

Review of Cases



4.26 For cases concluded after we have examined the issues under complaint, complainants dissatisfied with our findings or conclusions may seek a review. If the complainant provided material new facts or arguments, a review will be conducted.

4.27 This year we received 72 requests for review. We declined 24 requests and conducted 48 reviews. I varied my decision in four cases after review and upheld my original decision for the remaining 44, as shown in **Table 4d**.

Table 4d

Outcome of Review Cases

Result \ Reason	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	4	–	–	–	–	4
Decision upheld	–	44	–	–	–	44
						48

Judicial Review and Litigation

4.28 A complainant not satisfied with my decision may, apart from requesting a review by me, seek a judicial review by the court. There was no application or action for judicial review against my decision during the year.

4.29 However, a complainant who had lodged a complaint with our Office against the Legal Aid Department, which was subsequently screened out by us, took civil action in August 2014 against three Government departments and an outside party as well as The Ombudsman for financial damages. Our application to strike out the plaintiff's claim against The Ombudsman was heard in March 2015. The plaintiff was absent from the hearing, which was adjourned till June 2015.

Challenging Complainant Behaviours

4.30 While the majority of complainants are reasonable and come up with justifications for their complaints, challenging complainant behaviours are not uncommon in our daily work. Apart from verbal abuse and manipulation, some took the form of sending in voluminous materials in support of their complaints, often with a long history of past email correspondence. Going through the material, which may prove to be irrelevant at the end, was very taxing on our staff time. Some complainants would write in almost every day, either repeating their complaints with updates on the ongoing development of the matter or with new issues raised. For these complaints we would have difficulty in defining the scope of and deciding when to commence our inquiries. A few complainants were particularly persistent in lodging repeated complaints against a specific organisation, picking on small defects or service gaps in its daily operations. Yet other complainants would air their dissatisfaction with our findings by lodging staff complaints against our officers. We understand that such behaviours are a common feature of any complaint handling work. As in the past, we respond to the challenges with professionalism and provide adequate training to our staff.

Long Response Time Taken by Organisations

4.31 Our investigation work generally received good support from Government departments and public organisations in providing prompt and full responses to our inquiries. However, at times we encountered delays by some of them and their response could sometimes be up to two or three months. On a few occasions we had to contact the heads of the organisations concerned direct and sought their assistance for quicker responses.

Overview

4.32 In the year under report we increased our effort in a number of areas of our investigation work, with success. With particular achievement was our effort to promote mediation as a method to resolve suitable complaints. This was evidenced by not only the big increase in the number of cases successfully mediated and the number of organisations agreeing to use this mechanism, but also the very positive feedback provided by both the complainants and organisations participating

in the process. Our in-depth investigation in a number of cases about refusal of access-to-information requests helped the organisations concerned to better understand the spirit of transparent public administration. Apart from continuing to analyse cases of breach of the Code on Access to Information and identify the reasons for unjustifiable refusals of requests for disclosure and common faults in compliance with the Code, we started to compile separate statistics on complaints of a similar nature against organisations not covered by the Code. We kept up our effort in conducting full investigations where necessary and completed seven direct investigations, which attracted wide media coverage and editorial commentaries.

4.33 We would continue with our efforts where successes have been achieved and strive to improve our methods and procedures for better results.





– Chapter 5 –

Office Administration

Staffing

5.1 A stable workforce plays a pivotal role in the efficient and effective delivery of our services. During the year, we continued our effort in fortifying a solid base of homegrown investigation officers by recruiting graduates with relatively little working experience to the entry rank of the Investigation Officer grade, offering them a clear career path and early nurturing. A healthy contingent of investigation officers at entry level had gradually taken shape to reinforce the research and investigation support for each of our investigation teams. Apart from internal promotion, we continued to recruit people with public sector experience directly to more senior ranks so as to broaden the outlook and experience of the grade. As in previous years, we supplemented our regular workforce with temporary investigation officers who had rich experience in public administration to enhance our capacity in coping with fluctuations in caseload and meeting the service demand for *ad hoc* projects.

5.2 During the year, we appointed four investigation staff (one at Senior level and three at Assistant level) through internal promotion and open recruitment. Our organisation chart is at **Annex 12**.

Training

5.3 We continued to attach utmost importance to staff training with a view to equipping staff with the required skills for efficient and effective discharge of their duties.

5.4 In view of the increasingly demanding nature of complaint handling, this year's complaint handling workshop had focused on how to identify the needs of complainants and initiate effective interaction and communication with complainants, particularly in difficult work situations.



Complaint handling workshop

5.5 As an ongoing effort to promote the use of mediation as a means of conflict resolution in suitable complaint cases, we further strengthened the sponsorship for our investigation staff to attend mediation training and apply for accreditation as mediator.

Table 5a

Staff Complement

Breakdown of staff	As at 31.3.2013	As at 31.3.2014	As at 31.3.2015
Directorate	4	4	4
Investigation	60	61	63
Administrative & Support	47	48	48
Total regular staff	**111**	**113**	**115**
Temporary investigation staff: equivalence to full-time posts (total man-days)	3.9 (1,032)	1.9 (507)	2 (529)
Grand Total	**114.9**	**114.9**	**117**

5.6 To broaden our exposure to practices and systems concerning public administration and complaint investigation in different institutions or jurisdictions, ten staff (including a directorate staff and nine investigation officers) participated in a training programme in Beijing organised by the Ministry of Supervision, China, to study the administrative system and other development in the Mainland in June 2014, and four investigation officers attended the International Seminar and 2nd Training Workshop co-organised by the International Ombudsman Institute and Asian Ombudsman Association in Bangkok and Pattaya, Thailand in March/April 2015.



Training workshop in Beijing

Employee Assistance Programme

5.7 In July 2014, we launched an Employee Assistance Programme to promote and offer necessary coaching and counselling to our staff in achieving personal and professional effectiveness as well as work-life balance. Under the Programme, we organised two wellness promotion workshops to equip our staff with techniques and health tips for managing stress and enhancing their general well-being.



Wellness promotion workshop



Training workshop in Beijing

Complaints against the Office

5.8 This year, we concluded a total of 35 complaints against the manner of our staff and/or our work procedures. Of these, one was found substantiated and two, partially substantiated. On each occasion, we updated our work practices and provided appropriate counselling to the officers concerned.

5.9 About two-thirds of the complaints against this Office arose from dissatisfaction with our conclusions and decisions on their cases against Government departments and public organisations. These are in fact the comments on our findings and do not necessarily reflect on the performance of our staff or the quality of our inquiries. Nevertheless, we have in place a mechanism for review of our findings. In this regard, where we have ground for re-assessment or review, we will do so. In any event, we value feedback from the public and would strive to improve our services continually.

Table 5b

Complaints against the Office concluded in 2014/15

Classification	No. of complaints concluded	Percentage
Substantiated	1	2.9%
Partially-substantiated	2	5.7%
Unsubstantiated	32	91.4%
Total	**35**	**100.0%**



The Ombudsman's Awards

嘉許獎 申訴專員

The Ombudsman's Awards are presented once a year. The scheme aims to recognise Government departments/public organisations and public officers for their positive attitude in handling complaints. It thus serves to foster a positive culture of service and to promote a high standard of administration in the public sector.

Awards for Public Organisations

The Office of The Ombudsman scrutinises the overall performance of departments/organisations in the course of our inquiries or investigation in the last reporting year and judge according to the following criteria:

1. Effective internal administrative systems which are essential for providing quality
2. Professionalism in handling complaints
3. Commitments to improve the quality of service to the public

Awards for Public Officers

Officers are to be nominated by their heads of departments/organisations and carefully considered by our selection panel. Where appropriate, The Ombudsman may identify and award officers found to be exceptionally meritorious serving the public and handling complaints.

Selection Criteria

Awardees are considered mainly on the basis of the following attributes:

- Responsibility
- Receptiveness
- Reasonableness
- Fairness
- Impartiality
- Positive attitude
- Readiness to improve

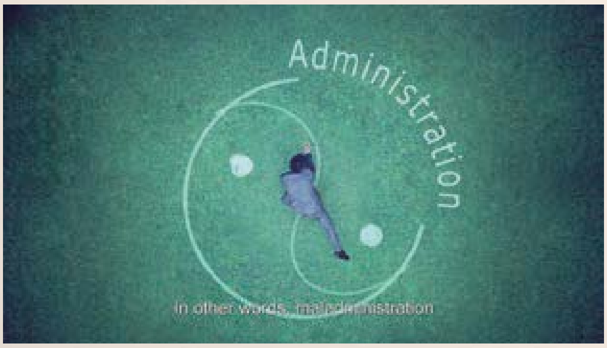
Publicity and External Relations

6.1 Promotion of public awareness is a key aspect of our work. We strive to reach out to the public to bring out the importance of quality public administration and foster a positive complaint culture. Throughout the year, the Office engaged our stakeholders in achieving our mission.

Public Education and Promotion

Publicity Campaign

6.2 We rolled out a brand new publicity campaign of "Say NO to Maladministration" from October 2014 to March 2015. The campaign used the Chinese traditional physical exercise, Tai-Chi playing, as imagery for maladministration and educate the public on proper channels to lodge administrative complaints against Government departments and public organisations with justifications. Our messages were disseminated through television, radio, public transport, online TV channels, as well as print advertisement on free dailies, bus body and at bus station shelters.



TV Commercial – "Say NO to Maladministration"

Roving Exhibition

6.3 Along with the launch of the publicity campaign, we staged a roving exhibition at 13 sites across the territory, including Government offices and shopping malls. Such a showcase of the functions of The Ombudsman enabled the public to understand what maladministration is and the way to lodge a complaint. Information leaflets and souvenirs were distributed to viewers.





Roving exhibition



Bus body advertisement



Print advertisement – "Say NO to maladministration"

Press Conferences and Releases

6.4 To highlight to the public our efforts and the findings of our significant investigations, we organised four press conferences, announcing the results of three investigation reports on complaint cases and six direct investigation reports during the year. We also declared the launch of eight direct investigations to invite public views. The media as well as the public at large showed their support to our initiatives and findings.



Press conference

Table 6a

Press Conferences/Press Releases	
8 May 2014	• Declaration of direct investigation into regulation of fire safety measures for New Territories exempted houses
26 June 2014	• Announcement of findings of direct investigations on: i) Regulatory measures and enforcement actions against street obstruction by shops ii) Management and release of patient records by Hospital Authority
7 August 2014	• Declaration of direct investigation into Rating and Valuation Department's administration of building numbering
23 September 2014	• Declaration of direct investigation into Government's tree management regime and practices
13 October 2014	• Announcement of findings of direct investigation on Government's regulation of guesthouses • Announcement of findings of investigation of complaints on: i) Improper arrangements in allocating columbarium niches by Food and Environmental Hygiene Department ii) Refusal by Water Supplies Department and Lands Department to take over and maintain waterworks in government road areas
27 October 2014	• Declaration of direct investigation into Education Bureau's non-disclosure of information on teachers' registration status
20 November 2014	• Declaration of direct investigation into Government regulation of rehabilitation transport services to persons with mobility difficulties
18 December 2014	• Declaration of direct investigation into Water Supplies Department mechanism for handling leaks (bursts) of private water pipes
27 January 2015	• Announcement of findings of direct investigation on mechanisms used to review and monitor eligibility of existing tenants in subsidised public housing • Announcement of findings of investigation of complaint against Airport Authority for mishandling enquiries about its CCTV system
24 March 2015	• Announcement of findings of direct investigation on: i) Procedures for approval of loan applications and recovery of debts under the Non-means-tested Loan Scheme ii) Education Bureau's non-disclosure of information on teachers' registration status

Media Relations

6.5 We count on the support of media to help disseminate information to the public. During the year, I hosted a media gathering and attended media interviews to communicate with our stakeholders.



Media gathering

Talks to Government Departments and Public Organisations

6.6 To foster mutual understanding and cooperation, we delivered ten talks to Government departments and organisations during the year under report. We shared with them common concerns about maladministration and our experience in complaint handling. These talks were well-received by the audience.



Talk for Government department

Publications

6.7 To expand the distribution network for our publications, we solicited the assistance from management offices of housing estates, Government offices and libraries for handing out our publicity leaflets and complaint forms and displaying our posters. All members of the public are welcome to obtain our latest publicity materials from those venues, as well as the District Offices of the Home Affairs Department or our website.

Working with Professionals, Community Leaders, etc.

Advisers and JPs

6.8 Our Advisers and the Justices of the Peace ("JPs") under our "JPs Assistance Scheme" have been providing professional advice and enormous support to the Office, which facilitated the effective discharge of our statutory functions. In September 2014, we organised a seminar on "Sports Policy and Recreational/Sports Facilities". Speakers from the Leisure and Cultural Services Department, Advisers, JPs and our own staff had a constructive exchange of views on the subject.





Seminar of "Sports Policy and Recreational/Sports Facilities"

Legislative Councillors

6.9 I meet Members of the Legislative Council once a year to update them on the work of the Office. At this year's meeting on 9 December 2014, we exchanged views and had a very fruitful discussion on various matters of public concern.

The Ombudsman's Awards

6.10 The Ombudsman's Awards given every year aim to recognise the efforts of public bodies and their officers in handling complaints proactively and fostering efficient administration. The Leisure and Cultural Services Department won this year's Grand Award, while the Agriculture, Fisheries and Conservation Department and the Hong Kong Examinations and Assessment Authority were the runners-up. Individual awards were presented to 41 public officers. More than 200 guests attended the presentation ceremony on 30 October 2014 to celebrate the achievements of the awardees.

Table 6b

Winning Organisations for 2014
Leisure and Cultural Services Department – Grand Award
Agriculture, Fisheries and Conservation Department
Hong Kong Examinations and Assessment Authority



The Ombudsman's Awards presentation ceremony

Table 6c

Individual Awards for 2014

Organisation	No. of Awardees
1823, Efficiency Unit	1
Airport Authority	1
Buildings Department	1
Civil Engineering and Development Department	1
Companies Registry	2
Consumer Council	1
Correctional Services Department	1
Customs and Excise Department	2
Drainage Services Department	2
Electrical and Mechanical Services Department	2
Fire Services Department	1
Food and Environmental Hygiene Department	1
Highways Department	2
Home Affairs Department	2
Hong Kong Examinations and Assessment Authority	1
Hong Kong Police Force	1
Hospital Authority	2
Immigration Department	2
Inland Revenue Department	1
Judiciary	1
Land Registry	1
Leisure and Cultural Services Department	1
Mandatory Provident Fund Schemes Authority	2
Marine Department	1
Office of the Privacy Commissioner for Personal Data	1
Rating and Valuation Department	1
Securities and Futures Commission	2
Student Financial Assistance Agency	2
Water Supplies Department	2

Overseas and Mainland Liaison

6.11 We establish close relationship with many ombudsman institutions worldwide. As Hon. Secretary of Asian Ombudsman Association ("AOA"), I attended its Board Meeting in Seoul in July 2014 and also spoke at the Global Conference held in parallel on the subject of our mediation experience of handling complaints. Invited by the Thai Ombudsman, I delivered my keynote speech on "Fairness" at its International Seminar in Bangkok in March 2015.



AOA Global Conference in Korea

6.12 In October 2014, I led a delegation of six members from my Office to Beijing and Nanjing as part of an exchange programme with the China Supervision Ministry. Through meetings with various government offices, we gained an in-depth understanding of their administrative supervision system. We also shared with them our views and information on good governance.





Visit to Beijing and Nanjing

6.13 We are happy to receive local and overseas delegations to apprise them of our work and functions. Throughout the year, we delivered talks to various visiting delegations, including officials from Mainland government bodies. The list of visitors is at **Annex 14**.



Visit of the Deputy Director of the Legislative Affairs Office of China's State Council

Looking Ahead

6.14 We will step up our efforts to reach out to the community and solicit public support. At the same time, we also value ideas and suggestions from our counterparts to strive for continuous improvement of our services.

Press Conferences



13 Oct 2014



26 Jun 2014



27 Jan 2015



Our TV series, "Ombudsman Special", was rated among the top 20 TV programmes in the 2013 TV Programme Appreciation Index Survey. One of its episodes, You be the Judge", won an award at the New York TV Festival 2014.





Our Chief Investigation Officers conducted outreach talks to departments to deepen their understanding of our work.



As Honorary Secretary of the Asian Ombudsman Association, The Ombudsman attended its Board Meeting in Seoul on 1 July 2014



The Ombudsman as Judge of the Inter-collegiate Debate Competition 2014 on 26 Apr 2014



The Ombudsman met Mr Huang Shuxian, the Minister of Supervision, on 15 Sep 2014



Seminar for Advisers and JPs on 24 Sep 2014



Presentation Ceremony of The Ombudsman's Awards on 30 Oct 2014



Overseas delegation from Korea visited The Ombudsman's Office on 4 Feb 2015

Annexes


Annexes

List of Scheduled Organisations



Organisations Listed in Part I of Schedule 1, Cap. 397

	Organisation	Abbreviation
1.	Agriculture, Fisheries and Conservation Department	AFCD
2.	Airport Authority	AA
3.	All registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility	JA
4.	Architectural Services Department	Arch SD
5.	Audit Commission	Aud
6.	Auxiliary Medical Service	AMS
7.	Auxiliary Medical Service (Government department)	AMS
8.	Buildings Department	BD
9.	Census and Statistics Department	C & SD
10.	Civil Aid Service	CAS
11.	Civil Aid Service (Government department)	CAS

	Organisation	Abbreviation
12.	Civil Aviation Department	CAD
13.	Civil Engineering and Development Department	CEDD
14.	Companies Registry	CR
15.	Competition Commission	COM C
16.	Consumer Council	CC
17.	Correctional Services Department	CSD
18.	Customs and Excise Department	C&ED
19.	Department of Health	DH
20.	Department of Justice	D of J
21.	Drainage Services Department	DSD
22.	Electrical and Mechanical Services Department	E & MSD
23.	Employees Retraining Board	ERB
24.	Environmental Protection Department	EPD
25.	Equal Opportunities Commission	EOC
26.	Estate Agents Authority	EAA
27.	Financial Reporting Council	FRC
28.	Fire Services Department	FSD
29.	Food and Environmental Hygiene Department	FEHD
30.	General Office of the Chief Executive's Office	GOCEO
31.	Government Flying Service	GFS
32.	Government Laboratory	Govt Lab
33.	Government Logistics Department	GLD
34.	Government Property Agency	GPA
	Government Secretariat	GS
35.	– Chief Secretary for Administration's Office	CS
36.	– Chief Secretary for Administration's Private Office	CSAPO
37.	– Civil Service Bureau	CSB

List of Scheduled Organisations

	Organisation	Abbreviation
38.	– Commerce and Economic Development Bureau	CEDB
39.	– Constitutional and Mainland Affairs Bureau	CMAB
40.	– Development Bureau	DEVB
41.	– Education Bureau	EDB
42.	– Environment Bureau	ENB
43.	– Financial Secretary's Office	FS OFF
44.	– Financial Secretary's Private Office	FSPO
45.	– Financial Services and the Treasury Bureau	FSTB
46.	– Food and Health Bureau	FHB
47.	– Home Affairs Bureau	HAB
48.	– Labour and Welfare Bureau	LWB
49.	– Security Bureau	SB
50.	– Transport and Housing Bureau	THB
51.	Highways Department	Hy D
52.	Home Affairs Department	HAD
53.	Hong Kong Arts Development Council	HKADC
54.	Hong Kong Housing Authority	HKHA
55.	Hong Kong Housing Society	HKHS
56.	Hong Kong Monetary Authority	HKMA
57.	Hong Kong Observatory	HKO
58.	Hong Kong Sports Institute Limited	HKSIL
59.	Hospital Authority	HA
60.	Housing Department	HD
61.	Immigration Department	Imm D
62.	Information Services Department	ISD
63.	Inland Revenue Department	IRD

	Organisation	Abbreviation
64.	Intellectual Property Department	IPD
65.	Invest Hong Kong	Invest HK
66.	Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service	SCCS
67.	Kowloon-Canton Railway Corporation	KCRC
68.	Labour Department	LD
69.	Land Registry	LR
70.	Lands Department	Lands D
71.	Legal Aid Department	LAD
72.	Legislative Council Secretariat	LCS
73.	Leisure and Cultural Services Department	LCSD
74.	Mandatory Provident Fund Schemes Authority	MPFA
75.	Marine Department	MD
76.	Office of the Communications Authority	OFCA
77.	Official Receiver's Office	ORO
78.	Planning Department	Plan D
79.	Post Office	PO
80.	Privacy Commissioner for Personal Data	PCPD
81.	Radio Television Hong Kong	RTHK
82.	Rating and Valuation Department	RVD
83.	Registration and Electoral Office	REO
84.	Securities and Futures Commission	SFC
85.	Social Welfare Department	SWD
86.	The Hong Kong Examinations and Assessment Authority	HKEAA
87.	Trade and Industry Department	TID
88.	Transport Department	TD
89.	Treasury	Try

	Organisation	Abbreviation
90.	University Grants Committee, Secretariat	UGC
91.	Urban Renewal Authority	URA
92.	Vocational Training Council	VTC
93.	Water Supplies Department	WSD
94.	West Kowloon Cultural District Authority	WKCDA
95.	Working Family and Student Financial Assistance Agency	WFSFAA

Organisations Listed in Part II of Schedule 1, Cap. 397

	Organisation	Abbreviation
1.	Independent Commission Against Corruption	ICAC
2.	Hong Kong Auxiliary Police Force	HKAPF
3.	Hong Kong Police Force	HKPF
4.	Secretariat of the Public Service Commission	PSC

Circumstances where Complaints are not Followed Up or Investigated

– Annex 2 –



Actions not Subject to Investigation – Schedule 2, Cap. 397

1. Security, defence or international relations
2. Legal proceedings or prosecution decisions
3. Exercise of powers to pardon criminals
4. Contractual or other commercial transactions
5. Personnel matters
6. Grant of honours, awards or privileges by Government
7. Actions by the Chief Executive personally
8. Imposition or variation of conditions of land grant
9. Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
10. Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

Restrictions on Investigation of Complaints – section 10(1), Cap. 397

1. Complainant having knowledge of subject of complaint for more than two years
2. Complaint made anonymously
3. Complainant not identifiable or traceable
4. Complaint not made by person aggrieved or suitable representative
5. Subject of complaint and complainant having no connection with Hong Kong
6. Statutory right of appeal or remedy by way of legal proceedings (except judicial review) being available to complainant

Circumstances where The Ombudsman may Decide not to Investigate – section 10(2), Cap. 397

1. Investigation of similar complaints before revealed no maladministration
2. Subject of complaint is trivial
3. Complaint is frivolous or vexatious or is not made in good faith
4. Investigation is, for any other reason, unnecessary

Statistics

– Annex 3 –



Annex 3.1 - Caseload

Annex 3.2 - Enquiries/Complaints Received

Annex 3.3 - Nature of Complaints Processed

Annex 3.4 - Distribution of Enquiries/Complaints Received

Annex 3.5 - Distribution of Complaints Completed

Annex 3.6 - Complaints Pursued and Concluded: Top Ten Organisations

Annex 3.7 - Results of Complaints Concluded by Full Investigation

Annex 3.8 - Forms of Maladministration Substantiated by Full Investigation

Annex 3.9 - Results of Complaints Concluded by Inquiry

Annex 3.10 - Complaint Processing Time

Annex 3.11 - Achievement of Performance Pledges





Caseload

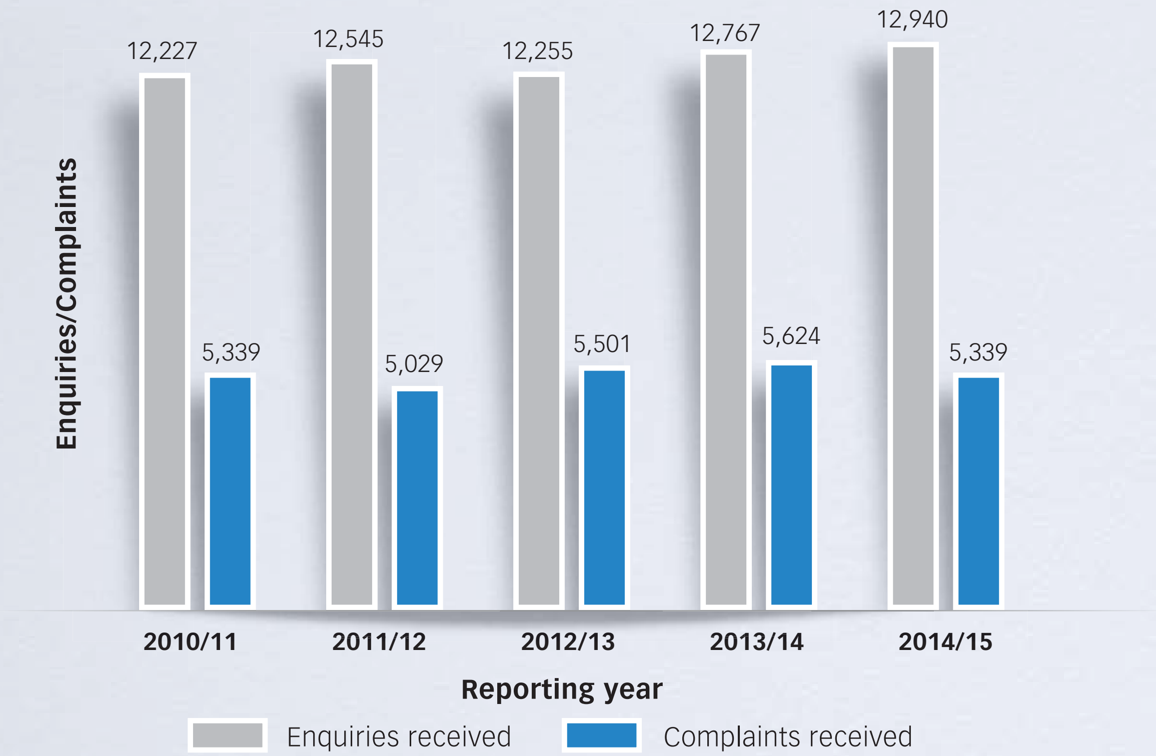
	Reporting year[1]				
	10/11	11/12	12/13	13/14	14/15
Enquiries	**12,227**	**12,545**	**12,255**	**12,767**	**12,940**
Complaints					
(a) For processing	**6,467**	**6,085**	**6,349**	**6,572**	**6,241**
– Received	5,339[627]	5,029[180]	5,501[238]	5,624[398]	5,339[428]
– Brought forward[2]	1,128	1,056	848	948	902
(b) Completed	**5,437[611]**	**5,237[210]**	**5,401[235]**	**5,670[367]**	**5,373[472]**
Pursued and concluded					
– By inquiry[3]	3,070[525]	2,731[7]	2,383[196]	2,605[36]	2,573[78]
– By full investigation[4]	155[76]	163[61]	169	321[12]	314[125]
– By mediation[5]	7	22[16]	22	38	138
Assessed and closed					
– Insufficient grounds to pursue[6]	1,027	1,156[84]	1,908[32]	1,432[192]	1,091[1]
– Legally bound[7]	1,178[10]	1,165[42]	919[7]	1,274[127]	1,257[268]
(c) Percentage completed = (b)/(a)	**84.1%**	**86.1%**	**85.1%**	**86.3%**	**86.1%**
(d) Carried forward = (a) – (b)	**1,030**	**848**	**948**	**902**	**868**
Direct investigations completed	**6**	**5**	**6**	**6**	**7**

Note 1. From 1 April to 31 March of the next year.
Note 2. Including 34 and 26 re-opened cases in 2010/11 and 2011/12 respectively.
Note 3. Pursued under section 11A of the Ordinance, for general cases.
Note 4. Pursued under section 12 of the Ordinance, for complex cases possibly involving serious maladministration, systemic flaws, etc.
Note 5. Pursued under section 11B of the Ordinance, for cases involving no, or only minor, maladministration.
Note 6. For example, lack of *prima facie* evidence, organisation concerned is taking action, mere expression of opinion, withdrawn by or no consent from complainants. (section 10(2))
Note 7. Outside our jurisdiction (sections 7(1) and 8) or restricted by section 10(1) of the Ordinance.
[ ] Number of topical cases.

– See "Glossary of Terms" for detailed definitions of the above terms.

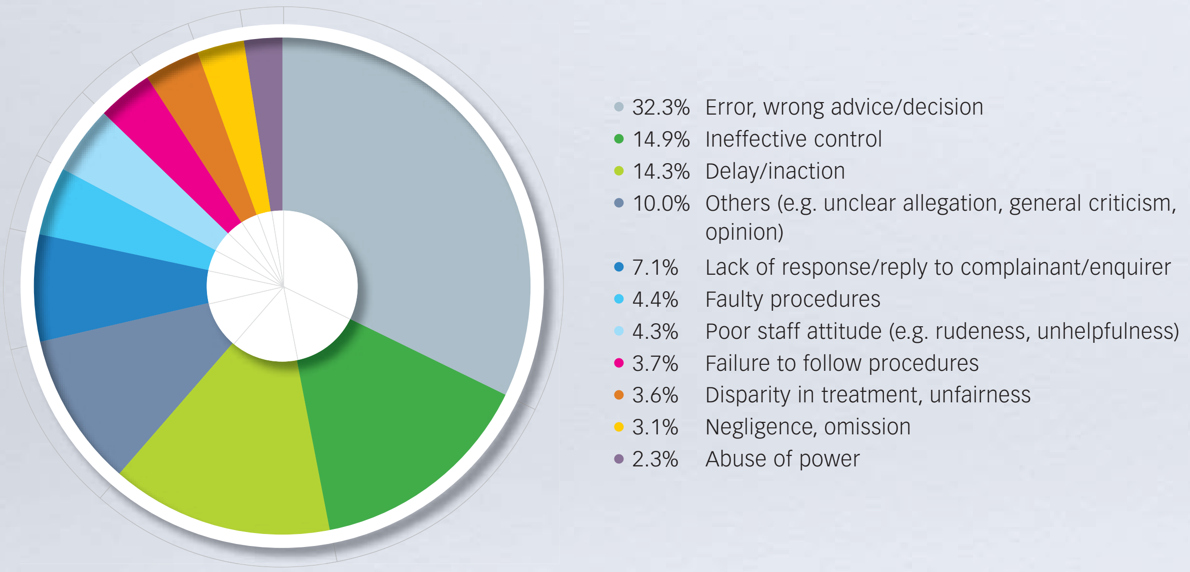
Enquiries/Complaints Received

– Annex 3.2 –



Nature of Complaints Processed

– Annex 3.3 –



Distribution of Enquiries/ Complaints Received

– Annex 3.4 –

Organisation	Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	57	41
Airport Authority	23	14
Architectural Services Department	12	13
Audit Commission	3	1
Auxiliary Medical Service	1	0
Buildings Department	339	253
Census and Statistics Department	3	4
Civil Aid Service	1	3
Civil Aviation Department	10	9
Civil Engineering and Development Department	6	15
Companies Registry	11	5
Consumer Council	62	91
Correctional Services Department	40	96
Customs and Excise Department	84	56
Department of Health	94	57
Department of Justice	10	10
Drainage Services Department	22	20
Electrical and Mechanical Services Department	39	23
Employees Retraining Board	17	7
Environmental Protection Department	62	65
Equal Opportunities Commission	51	39
Estate Agents Authority	21	7
Fire Services Department	55	63
Food and Environmental Hygiene Department	742	504
General Office of the Chief Executive's Office	10	8
Government Laboratory	0	1
Government Logistics Department	7	3
Government Property Agency	8	10

Distribution of Enquiries/ Complaints Received

Organisation	Enquiries	Complaints
Government Secretariat		
– Chief Secretary for Administration's Office	103	63
– Civil Service Bureau	12	13
– Commerce and Economic Development Bureau	12	8
– Constitutional and Mainland Affairs Bureau	6	7
– Development Bureau	11	13
– Education Bureau	105	88
– Environment Bureau	3	2
– Financial Secretary's Office	0	1
– Financial Secretary's Private Office	1	0
– Financial Services and the Treasury Bureau	9	10
– Food and Health Bureau	7	14
– Home Affairs Bureau	5	10
– Labour and Welfare Bureau	4	6
– Security Bureau	4	9
– Transport and Housing Bureau	7	17
Highways Department	64	71
Home Affairs Department	101	102
Hong Kong Arts Development Council	3	1
Hong Kong Examinations and Assessment Authority	12	3
Hong Kong Housing Authority	42	7
Hong Kong Housing Society	50	42
Hong Kong Monetary Authority	36	25
Hong Kong Observatory	5	2
Hong Kong Police Force	408	145
Hospital Authority	474	173
Housing Department	1056	664
Immigration Department	159	91

Organisation	Enquiries	Complaints
Independent Commission Against Corruption	23	6
Information Services Department	0	1
Inland Revenue Department	104	61
Intellectual Property Department	5	3
Judiciary Administrator	98	40
Kowloon Canton Railway Corporation	1	0
Labour Department	265	107
Land Registry	9	3
Lands Department	304	400
Legal Aid Department	134	80
Legislative Council Secretariat	6	9
Leisure and Cultural Services Department	235	199
Mandatory Provident Fund Schemes Authority	19	20
Marine Department	27	21
Office of the Communications Authority	40	30
Official Receiver's Office	58	26
Planning Department	25	81
Post Office	102	68
Privacy Commissioner for Personal Data	24	21
Radio Television Hong Kong	18	12
Rating and Valuation Department	31	21
Registration and Electoral Office	5	2
Securities and Futures Commission	19	28
Social Welfare Department	399	192
Trade and Industry Department	11	8
Transport Department	293	389
Treasury	5	5
University Grants Committee, Secretariat	0	1

Distribution of Enquiries/ Complaints Received

– Annex 3.4 –

Organisation	Enquiries	Complaints
Urban Renewal Authority	5	11
Vocational Training Council	22	15
Water Supplies Department	131	96
West Kowloon Cultural District Authority	2	1
Working Family and Student Financial Assistance Agency	43	18
Total	**6,952**	**4,980**

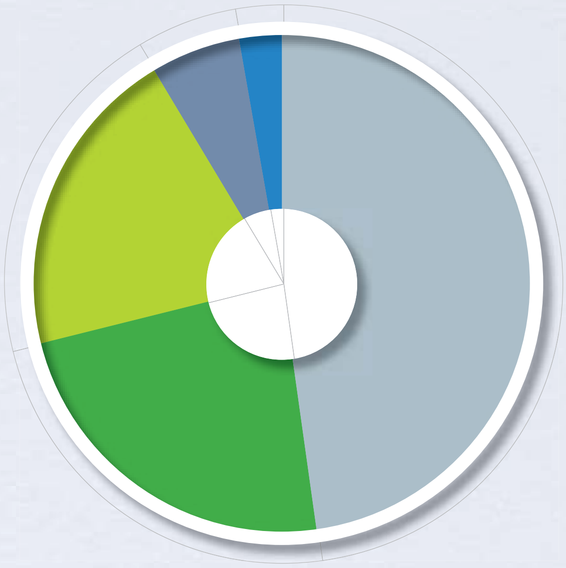
Note 1. The total number of enquiries and complaints received in Annex 3.1 are 12,940 and 5,339 respectively. They are different from the figures shown in Annex 3.4 because -
(i) enquiries/complaints involving bodies outside The Ombudsman's jurisdiction; and
(ii) complaints involving organisations under Part II of Schedule 1 to The Ombudsman Ordinance but unrelated to The Code on Access to Information
are not shown in Annex 3.4.

Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

Note 3. "Working Family and Student Financial Assistance Agency" was known as the "Student Financial Assistance Agency" before 1 March 2015.

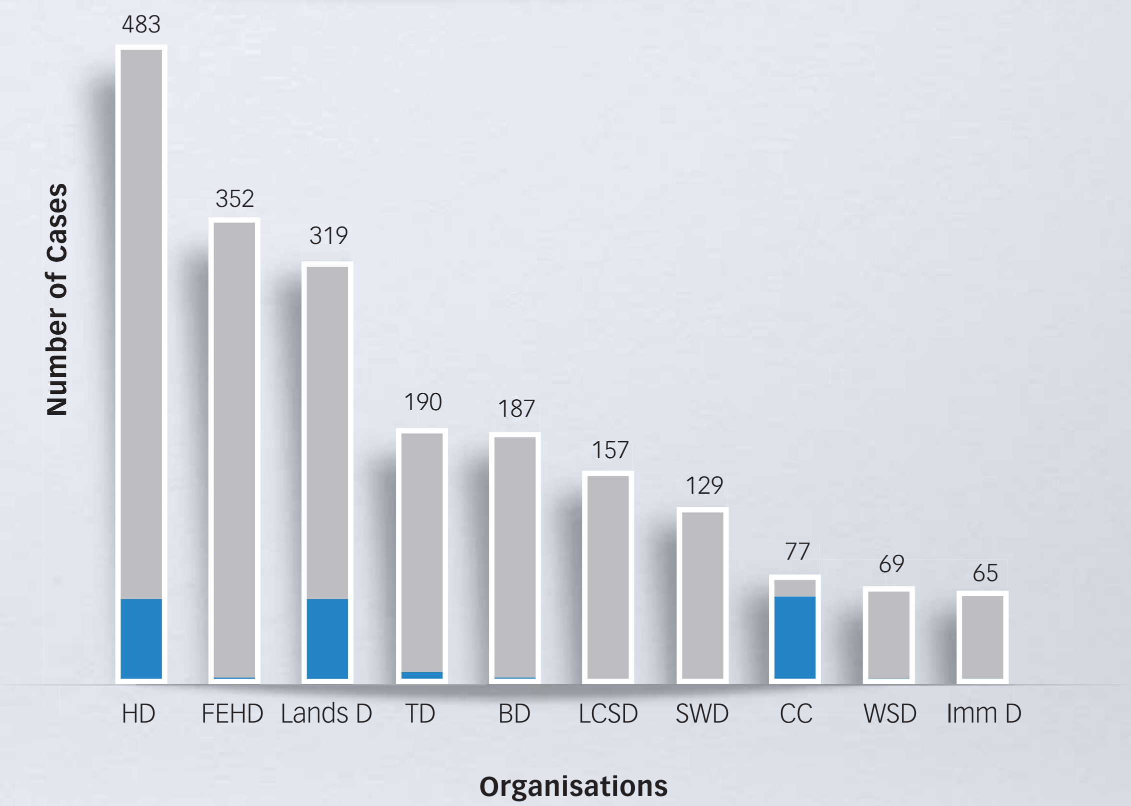
Distribution of Complaints Completed: 5,373 Cases

– Annex 3.5 –



Complaints Pursued and Concluded: Top Ten Organisations

– Annex 3.6 –



Notes

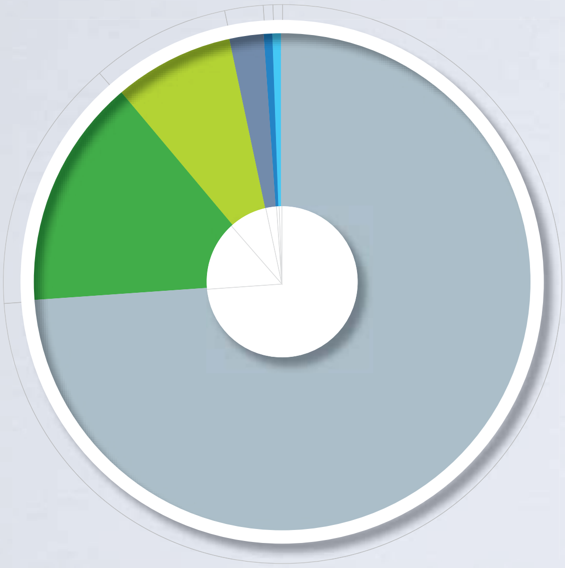
Note 1. "Complaints Pursued and Concluded" are cases handled by way of inquiry, full investigation or mediation.

Note 2. These top ten organisations accounted for 67.0% of the 3,025 complaints pursued and concluded.

Note 3. [blue box] signifies topical complaints (arising from the same social topics).

Results of Complaints Concluded by Full Investigation: 314 Cases

– Annex 3.7 –



- 73.9% Unsubstantiated
- 15.0% Partially substantiated
- 8.0% Substantiated
- 2.2% Unsubstantiated but other inadequacies found
- 0.6% Withdrawn/discontinued
- 0.3% Inconclusive

Forms of Maladministration Substantiated by Full Investigation

– Annex 3.8 –



- 31.0% Error, wrong advice/decision
- 21.0% Delay/inaction
- 18.0% Ineffective control
- 12.0% Lack of response/reply to complainant/enquirer
- 9.0% Failure to follow procedures
- 3.0% Faulty procedures
- 3.0% Poor staff attitude (e.g. rudeness, unhelpfulness)
- 2.0% Negligence, omission
- 1.0% Abuse of power

Results of Complaints Concluded by Inquiry

– Annex 3.9 –

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found	No. of Ombudsman's suggestions for improvement
Agriculture, Fisheries and Conservation Department	22	1	0
Airport Authority	5	0	0
Architectural Services Department	5	0	0
Audit Commission	1	0	0
Buildings Department	156	57	0
Census and Statistics Department	1	0	0
Civil Aviation Department	5	1	1
Civil Engineering and Development Department	11	0	1
Companies Registry	2	0	0
Consumer Council	12	3	0
Correctional Services Department	49	0	3
Customs and Excise Department	32	2	3
Department of Health	22	4	0
Department of Justice	4	1	0
Drainage Services Department	12	2	0
Electrical and Mechanical Services Department	8	3	0
Employees Retraining Board	4	1	0
Environmental Protection Department	46	9	0
Equal Opportunities Commission	16	2	0
Estate Agents Authority	4	1	0
Fire Services Department	29	0	0
Food and Environmental Hygiene Department	301	124	9
General Office of the Chief Executive's Office	1	0	0
Government Laboratory	1	0	0

Results of Complaints Concluded by Inquiry

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found	No. of Ombudsman's suggestions for improvement
Government Property Agency	4	1	0
Government Secretariat			
– Chief Secretary for Administration's Office	33	10	0
– Civil Service Bureau	1	1	0
– Commerce and Economic Development Bureau	3	0	0
– Constitutional and Mainland Affairs Bureau	4	2	0
– Development Bureau	6	2	0
– Education Bureau	37	4	0
– Financial Services and the Treasury Bureau	9	1	0
– Food and Health Bureau	8	1	0
– Home Affairs Bureau	6	0	0
– Labour and Welfare Bureau	1	0	0
– Security Bureau	4	1	0
– Transport and Housing Bureau	9	2	0
Highways Department	44	2	0
Home Affairs Department	53	7	2
Hong Kong Arts Development Council	1	0	0
Hong Kong Examinations and Assessment Authority	3	1	0
Hong Kong Housing Authority	3	0	0
Hong Kong Housing Society	25	2	2
Hong Kong Monetary Authority	13	0	0
Hong Kong Police Force	23	3	0
Hong Kong Sports Institute Limited	1	0	0
Hospital Authority	26	5	0

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found	No. of Ombudsman's suggestions for improvement
Housing Department	431	37	6
Immigration Department	64	10	1
Inland Revenue Department	23	4	0
Judiciary Administrator	12	1	0
Labour Department	31	6	0
Land Registry	1	0	0
Lands Department	226	62	4
Legal Aid Department	24	2	0
Legislative Council Secretariat	5	2	0
Leisure and Cultural Services Department	146	27	3
Mandatory Provident Fund Schemes Authority	9	3	0
Marine Department	14	2	0
Office of the Communications Authority	18	1	1
Official Receiver's Office	16	1	0
Other Organisations	12	0	0
Planning Department	23	1	0
Post Office	46	12	0
Privacy Commissioner for Personal Data	12	1	0
Radio Television Hong Kong	4	0	0
Rating and Valuation Department	9	2	1
Securities and Futures Commission	3	0	0
Social Welfare Department	116	15	0
Trade and Industry Department	4	0	0
Transport Department	168	22	3
Treasury	2	0	0
Urban Renewal Authority	6	0	0

Results of Complaints Concluded by Inquiry

– Annex 3.9 –

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found	No. of Ombudsman's suggestions for improvement
Vocational Training Council	10	1	0
Water Supplies Department	64	5	1
Working Family and Student Financial Assistance Agency	8	1	0
Total	**2,573**	**474**	**41**

Note 1. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by inquiry are not shown.
Note 2. The Ombudsman may suggest any number of improvement measures in a case, irrespective of whether inadequacies or deficiencies are found after inquiry.
Note 3. "Working Family and Student Financial Assistance Agency" was known as the "Student Financial Agency" before 1 March 2015.

Complaint Processing Time

– Annex 3.10 –

Overall

Time / Year	10/11	11/12	12/13	13/14	14/15
Less than 3 months	80.1%	83.9%	88.6%	85.8%	89.6%
3 – 6 months	19.3%	15.4%	10.7%	13.3%	9.9%
More than 6 months	0.6%	0.7%	0.7%	0.9%	0.5%
Total	**5,437**	**5,237**	**5,401**	**5,670**	**5,373**

By Full Investigation and Other Modes

Time / Year	10/11	11/12	12/13	13/14	14/15
Full investigation					
Less than 3 months	50.3%	4.9%	2.4%	4.4%	25.5%
3 – 6 months	29.0%	77.9%	78.7%	81.3%	66.2%
More than 6 months	20.7%	17.2%	18.9%	14.3%	8.3%
Number of complaints	**155**	**163**	**169**	**321**	**314**
Other modes					
Less than 3 months	80.9%	86.4%	91.4%	90.7%	93.6%
3 – 6 months	19.0%	13.4%	8.5%	9.2%	6.4%
More than 6 months	0.1%	0.2%	0.1%	0.1%	0.0%
Number of complaints	**5,282**	**5,074**	**5,232**	**5,349**	**5,059**

Achievement of Performance Pledges
(1 April 2014 to 31 March 2015)

– Annex 3.11 –

(A) Enquiries

	Response Time		
By telephone or in person	**Immediate**	**Within 30 minutes**	**More than 30 minutes**
	12,692 (100%)	0	0
In writing	**Within 5 working days**	**Within 6-10 working days**	**More than 10 working days**
	243 (98.0%)	5 (2.0%)	0

(B) Complaints*

	Response Time	
Acknowledgement	**Within 5 working days**	**More than 5 working days**
	4,954 (99.3%)	34 (0.7%)

* Excluding cases where acknowledgement is not necessary or practicable.

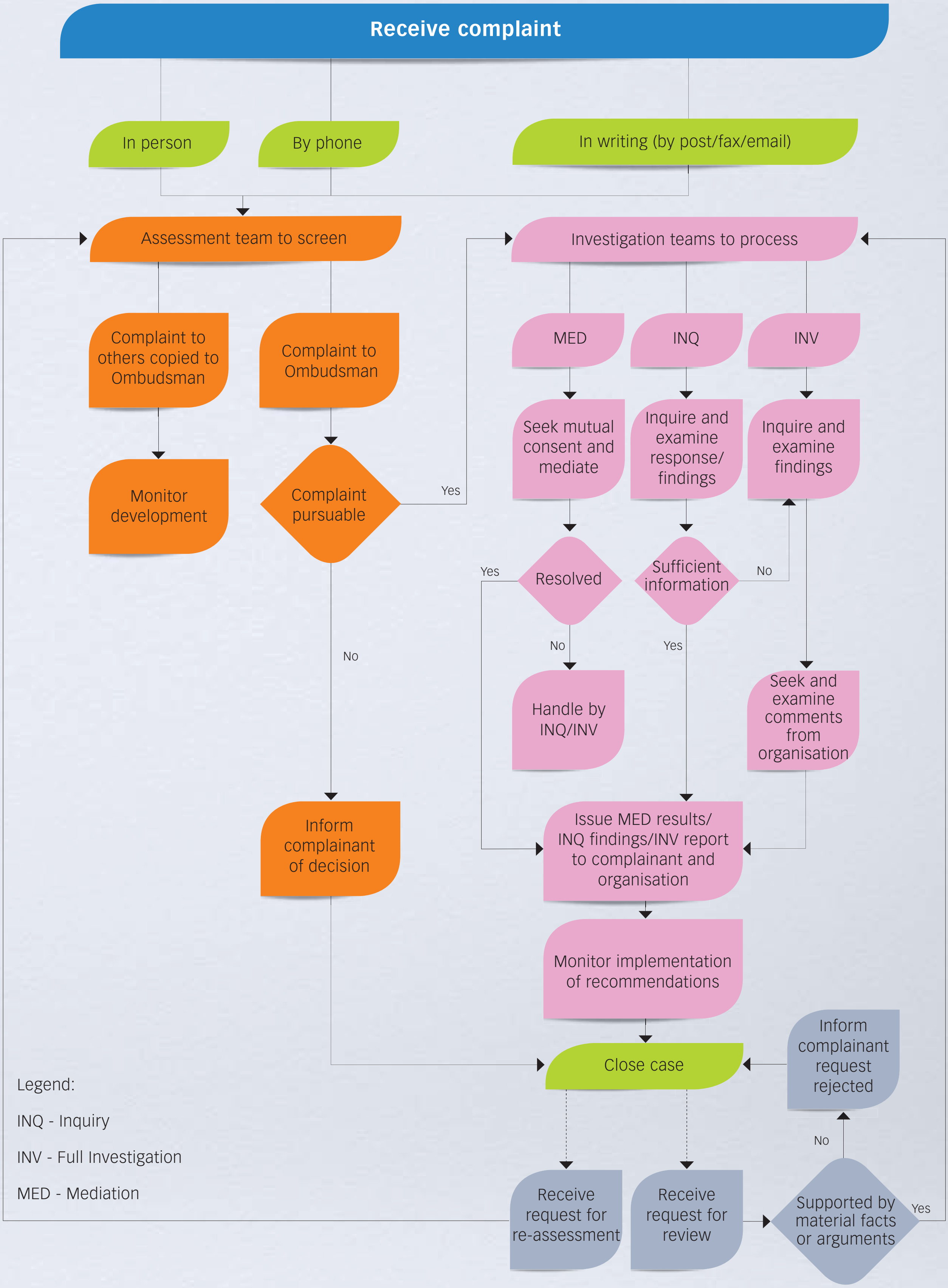
	Cases outside jurisdiction or under restriction			Other cases		
Cases concluded	**Within 10 working days**	**Within 11-15 working days**	**More than 15 working days**	**Less than 3 months**	**Within 3-6 months**	**More than 6 months**
	1,196 (90.9%)	113 (8.6%)	7 (0.5%)	3,501 (86.3%)	530 (13.1%)	26 (0.6%)
Target	Not less than 70%	Not more than 30%	–	Not less than 60%	Not more than 40%	–

(C) Outreach Talks

	Response Time	
Requests for outreach talks	**Within 10 working days**	**More than 10 working days**
	9 (100%)	0

Flow Chart on Handling of a Complaint

– Annex 4 –



Index of Direct Investigations and Selected Direct Investigation Assessments Completed

– Annex 5 –

Direct Investigations	
OMB/DI/236	Regulatory Measures and Enforcement Actions against Street Obstruction by Shops
OMB/DI/308	Management and Release of Patient Records by Hospital Authority
OMB/DI/354	Government's Regulation of Guesthouses
OMB/DI/331	Mechanisms Used to Review and Monitor Eligibility of Existing Tenants in Subsidised Public Housing
OMB/DI/305	Procedures for Approval of Loan Applications and Recovery of Debts under the Non-means-tested Loan Scheme
OMB/DI/365	Education Bureau's Non-disclosure of Teachers' Registration Status
OMB/DI/320	Safety Regulation of Eco-friendly Refrigerants

Direct Investigation Assessments (Selected)	
OMB/DI/353	Manpower Deployment Mechanism and Enforcement Procedures of Fire Services Department in Handling Complaints on Dangerous Goods
OMB/DI/352	Food and Environmental Hygiene Department's Procedures and Timeframe for Processing Provisional Licence Applications
OMB/DI/346	Highways Department's Records of Authorised Underground Public Utility Facilities
OMB/DI/333	Follow-up Actions Taken by Buildings Department on Receipt of Report About Suspected Unauthorised Subdivision of Flats in a Building
OMB/DI/355	Hospital Authority's Arrangement for Patients' Follow-up Treatment in Case of Leave of Paramedic Staff
OMB/DI/366	Regulation of Singing Activities in Parks by Leisure and Cultural Services Department

* In order of completion date



Education Bureau ("EDB")

Case No. OMB/DI/365

Education Bureau's Refusal to Disclose Teachers' Registration Status

(Investigation declared on 27 August 2014 and completed on 13 March 2015; full report [Chinese version only] available at www.ombudsman.hk)

Background

Under the Education Ordinance ("EO"), any person who intends to teach in a school must first apply to EDB for teacher registration. Accordingly, EDB holds the list of registered teachers ("the List"). On grounds of protecting teachers' privacy, EDB has all along rejected requests from the public for access to the List. However, media reports revealed that certain parents' associations and some teachers' organisations had postulated that EDB should open up the List for public inspection. The Ombudsman, therefore, conducted a direct investigation into EDB's handling of public requests for information on teachers' registration status, with a view to identifying room for improvement.

Our Findings and Comments

EDB's Reasons for Refusal

2. EDB gave the following reasons for its refusal to disclose the List or information on individual teachers' registration status:

(1) According to Principle 3 of the Data Protection Principles under the Personal Data (Privacy) Ordinance ("PD(P)O"), personal data shall only be used for the purpose stated at the time of data collection, unless the consent of the data subject has been given. EDB considered disclosure of teachers' registration status to be not in line with the original purposes for which such information was collected.

(2) The EO does not empower EDB to disclose information on teachers' registration status.

(3) There is already a system under which EDB and schools can adequately guard against the employment or continued employment of people not fit or proper as teachers in schools.

(4) Disclosure of information on teachers' registration status might lead to the following problems: lawsuits; indirect disclosure of teachers' employment status; and public misunderstanding that some school employees (such as non-teaching staff who are not required to register with EDB anyway) are "unlicensed teachers".

EDB Should Explore How to Make Teachers' Professional Status Open and Transparent

3. In refusing to disclose the List for public inspection, EDB was acting in accordance with the law. However, the aim of the teacher registration system is to ensure that schools employ only teachers who have acquired the necessary professional status to provide education with quality assurance to students.

Whether teachers are registered is indeed of interests to all schools, students and parents. Therefore, we consider that based on the broad principle of open and transparent public administration, EDB should strive to open up the List.

4. Moreover, EDB's existing system cannot completely prevent people who are not fit and proper from being employed as school teachers. For example, some schools may:

- employ people whom they know but who are not registered with EDB as temporary teachers when there is a shortage of teachers; and

- choose not to report to EDB cases of crime or misconduct involving their teachers to avoid bringing the schools into disrepute, in which case EDB would have no basis to consider de-registering the teachers in question.

5. The best way, therefore, is to open up the List so that the public can help monitor teachers and report suspicious cases to further safeguard public interests.

6. As regards the concerns raised by EDB and some people opposed to disclosure of the List (e.g. that: teachers have not given consent for EDB to disclose their personal data; the public may further request disclosure of teachers' other information; and disclosure of the List may cause public misunderstanding that some school employees are "unlicensed teachers"), we believe that those problems are not insurmountable. Besides, such concerns are no good reason for denying the public of their right to information.

7. Moreover, while EDB was aware of the reservations of some members of the profession about disclosure of the List, it had neglected the views of the public at large, particularly those of parents. In fact, some had already pointed out that many other professions in Hong Kong (including medical practitioners, lawyers and social workers) do make their lists of registered members open for public inspection. Hence, keeping the identity of registered teachers secret is unwarranted. EDB, therefore, should conduct an extensive public consultation exercise or opinion poll to confirm the public's aspirations; then consider what to do next as to how to open up the List.

EDB Should Adopt a More Accommodating Approach in Considering Information Requests Made by Those Whose Vital Interests are Affected

8. According to the relevant provisions of Principle 3 of the Data Protection Principles under the PD(P)O and the view offered by the Office of the Privacy Commissioner for Personal Data, EDB's disclosure of only the registration status of a teacher to individual persons may not amount to a breach of the PD(P)O, so long as the purpose of such disclosure is directly related to the purposes for which the information was to be used at the time the information was collected.

9. We consider that the registration status of a teacher certainly concerns vital interests of the students' parents and the school which intends to employ the teacher. Requests made by those parents/school authorities to access the information on teachers' registration status are reasonable. Disclosure of such information by EDB to them could be deemed as directly related to the original purposes of collecting such data (which include "teacher registration" and "provision of education services"). Therefore, we believe that it may not amount to a breach of the PD(P)O if EDB is to disclose information on the teachers' registration status under these circumstances.

10. It is imperative for EDB to review its practice relating to handling requests from individuals and schools to access information on the registration status of individual teachers. If requests of the individuals/organisations are related to their vital interests, EDB should adopt a more accommodating approach in considering such requests and, in particular, should as far as possible give definite replies to the enquiries of schools/parents.

Recommendations

11. The Ombudsman urges EDB to:

    (1) review its practice relating to handling of requests from individuals/organisations to access information on the registration status of individual teachers, with a view to adopting a more accommodating approach in considering requests made by those whose vital interests are affected; and

    (2) conduct an extensive public consultation exercise or opinion poll to confirm the public's aspirations for disclosure of the List; if the results indicate wide public demand for disclosure, EDB should expeditiously consider amending the relevant procedures and legislation to implement the measure.



Environmental Protection Department ("EPD"), Electrical and Mechanical Services Department ("E & MSD"), Fire Services Department ("FSD") and Labour Department ("LD")

Case No. OMB/DI/320

Safety Regulation of Eco-friendly Refrigerants

(Investigation declared on 17 November 2014 and completed on 31 March 2015; full report [Chinese version only] available at www.ombudsman.hk)

Background

In January 2013, an explosion occurred and a fire broke out when a technician was repairing the air-conditioning systems at a restaurant in Ma On Shan. More than 20 persons were injured and the restaurant was seriously damaged.

2. According to media reports, the incident was caused by improper use of flammable refrigerants. It was also reported that the refrigerants in question were not under Government regulation or subject to any legislation.

3. In view of the importance of safe use of refrigerants to our daily lives, The Ombudsman initiated this direct investigation.

Our Findings

Overall Observations

4. The traditionally used refrigerants, namely chlorofluorocarbons ("CFCs") and hydrochlorofluorocarbons ("HCFCs"), were of low flammability but not eco-friendly. Under the Montreal Protocol on Substances That Deplete the Ozone Layer ("the Montreal Protocol"), CFCs had been phased out while HCFCs were being replaced gradually.

5. Currently, the most widely used refrigerants, i.e. hydrofluorocarbons (high global warming potential) ("HFCs (high GWP)"), were of low flammability but only semi-eco-friendly. The parties to the Montreal Protocol were discussing ways to replace or control such refrigerants.

6. New-generation refrigerants, including hydrocarbons ("HCs") and hydrofluorocarbons (low to moderate global warming potential) ("HFCs (low to moderate GWP)"), were more eco-friendly but more flammable. While some flammable refrigerants were banned on certain uses, in some areas, they were introduced for use under restriction in an organised manner in other areas, such as the Mainland and Japan. In these areas, regulation of refrigerants may fall under the jurisdictions of different departments but usually there would be a leading or coordinating department.

7. In Hong Kong, the regulation of refrigerants involved at least four Government departments and four Ordinances. There was no specific legislation enacted to regulate refrigerants. Nor was there any leading department responsible for coordination. The situation was set out below:

- EPD: to control or phase out the manufacture and use of ozone-depleting substances under the Ozone Layer Protection Ordinance.
- E & MSD: to regulate liquefied petroleum gas ("LPG") refrigerants based on the Gas Safety Ordinance.
- FSD: to regulate non-LPG refrigerants that are classified as dangerous goods based on the Dangerous Goods Ordinance.
- LD: to regulate responsibilities of employers and employees in respect of safety in the working environment based on the Occupational Safety and Health Ordinance.

8. Prior to the introduction of flammable refrigerants, there may not be any major problem with such regulatory arrangements. However, as shown by the Ma On Shan incident, the problem of insufficient regulation would emerge if flammable refrigerants were increasingly being used. Our investigation found the following six areas of concern.

I. Inadequate Regulatory Mechanisms

9. Depending on their composition, flammable refrigerants may be classified as LPG or non-LPG. The regulatory mechanisms for the two types of refrigerants were different, as explained below:

- If the composition of a refrigerant fell within the definition of LPG under the Gas Safety Ordinance, E & MSD had the power to regulate its manufacture, storage, transport, use, import and supply, including its use in air-conditioning systems.
- For refrigerants which were non-LPG dangerous goods, FSD could invoke the Dangerous Goods Ordinance to regulate their manufacture, storage, transport and general use but not their import or supply, nor their use in air-conditioning systems.

10. To put LPG and non-LPG refrigerants with similar flammability under different regulatory mechanisms might lead to problems, as could be seen from the following examples:

- The air-conditioning contractor involved in the Ma On Shan incident had, in 2011 at a premises in Tsim Sha Tsui, replaced a non-flammable refrigerant with a flammable LPG refrigerant in an air-conditioning system of a design not suitable for flammable refrigerants. Out of safety concern and in accordance with the Gas Safety Ordinance, E & MSD ordered that operation of the system be stopped at once.

- In the Ma On Shan incident, the same contractor used a flammable refrigerant that E & MSD classified as non-LPG in three air-conditioning systems of a design not suitable for flammable refrigerants. After one of the systems exploded, the remaining two were allowed to continue operation without any control. This was because under current regulatory arrangements, all the three departments concerned considered such operation to be outside their jurisdictions, their views being –

    - E & MSD: its jurisdiction did not include non-LPG refrigerants.

    - FSD: its jurisdiction did not include the use of refrigerants in air-conditioning systems.

    - LD: its jurisdiction did not include matters other than work procedures.

11. Were such regulatory arrangements sufficient or appropriate? We considered that Government should review the issue.

II. Disagreement on Jurisdictions

12. There was disagreement between E & MSD and FSD on who should be responsible for regulating certain types of flammable refrigerants (including R290, a highly flammable refrigerant the safe use of which was causing concern internationally). This disagreement emerged in 2010 and up to this date remained unresolved.

13. As the matter concerned public safety, the protracted disagreement could lead to serious problems. For instance:

- Those intending to import or use the refrigerants concerned in accordance with the law would be at a loss as to what to do. For example, an air-conditioning provider made an enquiry with E & MSD in November 2014 as to the regulatory requirements for flammable refrigerant HR427A but till March 2015 was not given any answer. This was because E & MSD and FSD could not agree on which department should be responsible for regulating HR427A.

- Some people might exploit this grey area to avoid regulatory controls, thereby posing a risk to public safety. For example, the initial findings of the investigations carried out by E & MSD in late 2014/early 2015 showed that apart from Ma On Shan, other places (such as Tsim Sha Tsui and Tuen Mun) also saw flammable refrigerants being used to replace non-flammable refrigerants on unsuitable air-conditioning systems. The flammable refrigerant used was HR429, which both E & MSD and FSD considered as outside their jurisdictions.

14. We considered that E & MSD and FSD should work together to resolve the disagreement on their jurisdictions as quickly as possible.

III. Inadequate Monitoring

15. Our investigation found that none of the departments concerned was fully in the picture as to the development of refrigerants and their use in Hong Kong:

- EPD: did not hold information unrelated to environmental protection.

- FSD: learned from the industry that the use of flammable refrigerants had become more common as a result of active promotion of environmental protection worldwide in recent years.

- E & MSD: considered the use of flammable refrigerants highly risky under the present circumstances in Hong Kong but nonetheless repeatedly stressed to this Office that there was no information to suggest that flammable refrigerants would be increasingly used in Hong Kong, because it had been told by the major trade associations that Hong Kong had not imported any air-conditioning equipment suitable for the use of flammable refrigerants. We found E & MSD's understanding of the situation inadequate because –

  - Air-conditioning equipment using flammable refrigerants were already being manufactured in Japan and the Mainland. Even if such equipment had not been imported by members of the major trade associations, they might have been imported by other members of the trade.

  - Hong Kong had no control on the import of flammable refrigerants or air-conditioning equipment using such refrigerants. Even if no such equipment had so far been imported, there could be no guarantee that they would not be imported in future.

  - Even if Hong Kong had not imported any equipment suitable for flammable refrigerants so far, the initial findings of E & MSD's recent investigations already revealed that flammable refrigerants were being used to replace non-flammable refrigerants in existing air-conditioning systems at various premises in Hong Kong.

16. In the circumstances, there was a need for the departments concerned to establish a comprehensive and forward-looking monitoring mechanism in order to effectively regulate the use of refrigerants and ensure public safety.

IV. Lack of Communication and Coordination

17. In Hong Kong, the regulation of refrigerants involved at least four Ordinances under the purview of four different departments. None of the departments assumed a coordinating or leading role.

18. This lack of coordination had resulted in, inter alia, the following problems:

- The disagreement since 2010 between E & MSD and FSD on their jurisdictions remained unresolved while public safety was at stake.

- None of the departments involved was fully in the picture as to the up-to-date situation on use and development of refrigerants, nor was any one responsible for the comprehensive monitoring of the matter.

19. We considered effective coordination among the departments essential. In view of the complicated situation involving different legislation and jurisdictions, Government should appoint one department to act as coordinator.

V. Inadequate Liaison and Publicity

20. The departments liaised mainly with the major trade associations in the industry. This was inadequate, as the major trade associations could not represent those operators who were not their members (such as the air-conditioning contractor in the Ma On Shan incident), nor could they represent the small operators in the industry.

21. We considered it necessary for the departments concerned to expand their liaison networks. They should also make greater use of publicity and education to reach out to small air-conditioning operators, servicing workers and the general public, so as to raise their awareness about the safe use of flammable refrigerants.

VI. Inadequate Training for Workers

22. The direct cause of the Ma On Shan incident was improper work procedures adopted by the technician concerned in recovering the flammable refrigerants. The accident highlighted the importance of worker training. Moreover, we noted that the guidelines issued by the United Nations Environment Programme ("UNEP") and information from other jurisdictions all stressed that extra safety training was essential in the use of flammable refrigerants.

23. The current situation regarding training in Hong Kong was:

- Air-conditioning workers in Hong Kong were not required to undergo training on air-conditioning.
- While the Vocational Training Council (the major provider of vocational training in Hong Kong) offered non-compulsory courses on air-conditioning, these did not cover training on the use of flammable refrigerants on air-conditioning systems.
- A local air-conditioning workers association had expressed concern to E & MSD that Hong Kong workers had insufficient knowledge of and were poorly equipped to handle flammable refrigerants. The association also pointed out that flammable refrigerants were increasingly being used on the Mainland.

24. We considered the Ma On Shan incident had raised the alarm for Government departments to review the situation and to consider enhancing the training for air-conditioning workers.

Recommendations

25. The Ombudsman recommended that Government should:

(1) enhance inter-departmental coordination and appoint one department to take up the coordinating and leading role in the regulation of refrigerants;

(2) resolve the differences between E & MSD and FSD regarding their jurisdictions as quickly as possible;

(3) establish a comprehensive and forward-looking mechanism to monitor the development of refrigerants and their use in Hong Kong; and

(4) review the regulatory arrangements for refrigerants, in particular –

(a) review whether it was proper to put LPG and non-LPG refrigerants that were equally flammable under different regulatory mechanisms;

(b) consider stepping up training for air-conditioning workers;

(c) consider strengthening liaison with the air-conditioning industry; and

(d) consider making greater use of publicity and education to increase public awareness of the safe use of refrigerants.

Summaries of Direct Investigations Completed



Food and Environmental Hygiene Department ("FEHD"), Lands Department ("Lands D"), Buildings Department ("BD") and Home Affairs Department ("HAD")

Case No. OMB/DI/236

Regulatory Measures and Enforcement Actions against Street Obstruction by Shops

(Investigation declared on 17 July 2013 and completed on 23 June 2014; full report [Chinese version only] available at www.ombudsman.hk)

Background

Display and sale of goods outside shops often cause street obstruction and environmental hygiene problems. In recent years, such problems in various districts have persisted and been worsening. In this connection, The Ombudsman conducted this direct investigation to examine any inadequacies in Government's regulatory measures and enforcement actions against street obstruction by shops.

Our Findings

2. To tackle the various types of illegal activities relating to street obstruction by shops, the inter-departmental Steering Committee on District Administration ("SCDA") reached a consensus in 2009 regarding the exercise of enforcement powers under the relevant legislation by the departments concerned:

Illegal Activity	Relevant Legislation	Enforced by
Merchandise causing obstruction, inconvenience or danger to any person or vehicle in public place	Section 4A of the Summary Offences Ordinance ("street obstruction provision")	Mainly FEHD
On-street illegal hawking	Sections 83B(1) & (3) of the Public Health and Municipal Services Ordinance ("PHMSO") ("illegal hawking provision")	FEHD
Placement of articles, causing obstruction to scavenging operations	Section 22(1)(a) or 22(2)(a) of PHMSO	FEHD
Structure (e.g. platform, ramp or steps) occupying Government land	Section 6(1) of the Land (Miscellaneous Provisions) Ordinance ("L(MP)O")	Lands D
Unauthorised structure projecting from external wall of building	Section 24(1) of the Buildings Ordinance	BD

3. For complicated cases that involve the jurisdictions of different departments and for "black spots" of street obstruction, the District Offices ("DOs") under HAD would coordinate inter-departmental joint operations.

4. Government may exercise discretion to allow some shop operators to extend their business areas to designated areas in front of or adjacent to their shops ("tolerated areas"), provided that such areas have the agreement of the District Council ("DC")/ District Management Committee or that a consensus has been reached between FEHD, together with other relevant departments, and the shop operators. There are currently "tolerated areas" in eight localities.

Our Comments

Compartmental Mentality and Lack of Accountability

5. Currently, FEHD, Lands D and BD are responsible for taking enforcement actions within their own jurisdictions against different types of illegal activities relating to the street obstruction problem. The departments tend to think that they are collectively accountable for the problem and hence adopt a compartmental attitude. None of them seem willing to actively take up total responsibility and endeavour to find a complete solution to the problem. Sometimes, they just procrastinate until inter-departmental joint operations are coordinated by DOs.

FEHD's Predominant Use of Warnings Proved Ineffective

6. FEHD usually applies the strategy of "warning before prosecution" in its enforcement actions against shops causing street obstruction. However, FEHD's repetitive warnings have no effect whatsoever on habitual offenders. Upon receiving warnings, the offenders would rectify their irregularities temporarily, only to relapse as soon as the FEHD officers are gone. By contrast, prosecutions may lead to penalties and, therefore, have a stronger deterrent effect. Nevertheless, records revealed that the prosecution-to-warning ratio of FEHD was only about 1:6, while in some localities the ratio was even as low as 1:49.

Illegal Hawking Provision Seldom Invoked and Merchandise Rarely Seized by FEHD

7. For display and sale of merchandise outside shops, FEHD can in fact prosecute the shop operators by invoking the "illegal hawking provision", which empowers the Department to seize the merchandise. Yet, FEHD often applies the "street obstruction provision" instead, which does not empower the Department to seize merchandise.

8. FEHD indicated that according to legal advice, its enforcement officers must obtain substantive evidence, for example, cash transactions taking place outside the shop, before they can invoke the "illegal hawking provision" to initiate prosecutions. We consider that, even so, it should not be difficult for FEHD officers to collect such evidence since selling and buying of goods outside shops are very common. All it takes is close surveillance.

Long Lead Time for FEHD's Prosecution and Light Penalty

9. In recent years, over 90% of FEHD's prosecutions against shops for street obstruction were instituted by invoking the "street obstruction provision". With this kind of prosecutions, it normally takes several months before a summons can be issued and a court hearing held. Moreover, the average fine imposed by the court for the offences is only around \$500 to \$700, which has little deterrent effect.

10. This has prompted Government to consider a fixed penalty system. We believe that such a system can help deal with street obstruction cases more quickly and effectively. However, the departments concerned must at the same time devise a stringent enforcement strategy to maximise the effectiveness of the fixed penalty system. They must not continue to be lax in enforcement.

Lands D's Cumbersome Enforcement Procedures

11. According to L(MP)O, before prosecuting a person who illegally occupies Government land, the District Lands Office ("DLO") concerned of Lands D must give him/her advance notice. At present, Lands D's enforcement procedures provide that if the person removes the articles occupying Government land before the deadline specified by the Department, even though the articles are found occupying the land again afterwards, DLO should issue him/her a fresh notice instead of removing the articles right away or instituting prosecution. Many shop operators take advantage of this. Upon receipt of DLO's notice, the shop operators would temporarily remove the articles in question to meet DLO's requirement, only to put them back afterwards. That would not result in DLO's seizure of the articles or prosecution. We consider such enforcement procedures to be at odds with the spirit and intent of the provisions of L(MP)O, which state that the occupier must "cease occupation" of Government land and not just temporarily remove the articles that occupy the land. Lands D's current enforcement procedures are too cumbersome and clearly unable to resolve the problem of continual illegal occupation of Government land by shops.

Difference in Enforcement Priorities of Lands D and BD

12. Lands D and BD are respectively responsible for dealing with shop front platforms occupying Government land and unauthorised structures on the sides or at the top of shops. The two departments have their own considerations and different enforcement priorities. In particular, if the unauthorised structures on the sides or at the top of shops are within the dimensions tolerated by BD, the Department would refrain from taking enforcement action and, therefore, would not promptly conduct a joint operation with Lands D to remove the platform and the unauthorised structures concurrently.

Lax Regulation of "Tolerated Areas"

13. As local situations and public views vary from district to district, it may not be appropriate to apply the same enforcement strategy across the board. Fully acquainted with their districts, DCs are well poised to advise Government in drawing up their respective enforcement strategies that would balance the interests of different stakeholders, taking into account such factors as traffic flow and safety and the business of shops. We agree in principle that the setting up of "tolerated areas" with the respective DC's support was a reasonable concessionary arrangement.

14. However, shop operators often break the rules by extending their business areas well beyond the "tolerated areas", and yet FEHD adopts a very lax enforcement approach, with a prosecution-to-warning ratio as low as 1:49. We believe that it is FEHD's duty to take strict enforcement action against all those who blatantly disregard the rules and to ensure that the extent of street obstruction is contained within the "tolerated areas".

15. Some people are of the opinion that setting up "tolerated areas" means conniving at the wrongs and the shop operators may take for granted that they can occupy the public space outside their shops. Furthermore, allowing those shops to occupy such Government land at no cost amounts to preferential treatment and is unfair to shops elsewhere that are subject to prosecution for street obstruction; this may even make it difficult for frontline staff to take enforcement action against the latter. We deem it advisable for Government to take reference from overseas experience and consider enhancing the "tolerated area" mechanism such that besides having to obtain the DC's support, shops would need to pay Government a reasonable fee for enjoying the use of "tolerated areas", with the rights and obligations of the shop operators clearly laid down.

Our Recommendations

16. The Ombudsman made the following recommendations to the departments concerned:

SCDA

(1) to appoint one of the departments with enforcement powers as the lead department to tackle the problem of street obstruction by shops, and to instruct the other departments to assist and cooperate with it;

(2) as a longer-term measure, to consider setting up a "one-stop" joint office for tackling the problem of street obstruction by shops;

(3) when introducing the fixed penalty system, to require the departments concerned to devise a stringent enforcement strategy to maximise the effectiveness of the new system;

(4) to consider enhancing the "tolerated area" mechanism such that besides having to obtain the local DC's support, shops would need to pay Government a reasonable fee for enjoying the use of "tolerated areas";

FEHD

(5) to adjust its enforcement strategy for stronger deterrent effect, taking rigorous enforcement actions against habitual offenders, who should be prosecuted immediately for non-compliance, rather than being warned again and again;

(6) to step up efforts to collect evidence for more prosecutions and seizure of merchandise under the "illegal hawking provision" for stronger deterrent effect;

(7) to take strict enforcement actions against those shop operators who extend their business areas beyond the "tolerated areas" and to ensure that the extent of street obstruction is contained within the "tolerated areas";

Lands D

(8) to expedite Government's study and legislative amendments for stepping up enforcement actions and strengthening the deterrent effect of the law against continual illegal occupation of Government land by movable articles, with a view to plugging the existing loophole in the enforcement procedures; and

Lands D and BD

(9) to adjust their respective enforcement priorities for joint efforts to increase their efficiency in coping with cases of street obstruction; and to consult the Development Bureau where necessary.



Home Affairs Department ("HAD")

Case No. OMB/DI/354

The Government's Regulation of Guesthouses

(Investigation declared on 5 June 2014 and completed on 14 August 2014; full report available at www.ombudsman.hk)

Background

Operation of guesthouses is regulated by the Office of Licensing Authority ("OLA") under the Home Affairs Department ("HAD") pursuant to the Hotel and Guesthouse Accommodation Ordinance ("the Ordinance").

2. This Office received from time to time public complaints about OLA loosely issuing licences to guesthouses in multi-storey buildings without taking into account the nuisances and even dangers that such guesthouses may cause to people living in the same building. Other complainants reproached OLA for its ineffective enforcement against unlicensed guesthouses, which had resulted in the proliferation of such unlicensed establishments.

3. Against this background, The Ombudsman initiated a direct investigation to probe into the inadequacies in the Government's regime for regulation of guesthouses.

Our Findings and Comments

Licensing Regime Failed to Keep up with the Times

4. The legislative intent of the Ordinance was to ensure, through a licensing regime, that the premises used as guesthouses would meet the prescribed standards in respect of building structure and fire safety so as to protect the lodgers and the public. The licensing requirements prescribed in the Ordinance do not include compliance with the provisions of the land lease or the deed of mutual covenant ("DMCs"), or the views of people residing in the building.

5. Given the limitations of the Ordinance, we considered HAD to be acting in accordance with the law when it did not take into account the provisions of the land lease or DMC, or the residents' views, in processing applications for guesthouse licence. From an administrative point of view, we could not say that there was impropriety. Nevertheless, the number of guesthouses has been continuously on the rise in recent years. Understandably, some residents feel that their daily lives have been affected by the operation of guesthouses in their buildings (e.g. increased maintenance costs for the buildings). They expect that the Government's regulation of guesthouses should address not only safety concerns, but also the impact of such operations on their daily lives. We considered that HAD should have reviewed long ago the licensing regime for guesthouses and introduced improvement measures or even legislative amendments, so as to address the community's concerns.

Ineffective Enforcement Measures against Unlicensed Guesthouses

6. OLA had in recent years increased manpower and stepped up inspections and investigations to combat the rapid increase of unlicensed guesthouses. However, the prosecution rates remained exceedingly low because:

(1) as advised by the Department of Justice, the Government could not institute prosecutions merely based on "circumstantial evidence" (such as the layout and setting of the premises) under the existing legislation;

(2) uncooperative owners/operators of guesthouses had made it difficult for OLA officers to enter the premises for investigation;

(3) the penalties were light; and

(4) there had not been enough decoy operations for collecting evidence.

7. We considered that in face of such an unsatisfactory situation, HAD should have sought to change its enforcement strategy long ago (e.g. redeploying resources to conduct more decoy operations for collecting evidence) in order to achieve better results.

Public Consultation by HAD

8. After we declared our commencement of this direct investigation, HAD, in view of the concerns of different sectors of the community about the existing regulatory regime for guesthouses, launched in July 2014 a public consultation exercise on review of the Ordinance. In its consultation paper, HAD proposed a number of legislative amendments, including:

(1) to empower the Department to refuse to issue/renew licences or cancel existing licences on the grounds that the DMC provisions of the building concerned explicitly prohibit the operation of guesthouses;

(2) to empower the Department to take into account residents' views collected through local consultation;

(3) to add "deeming provisions" to the Ordinance for admission of "circumstantial evidence", such that the standard of proof by OLA can be lowered to facilitate prosecution against owners/operators of unlicensed guesthouses;

(4) to empower OLA to apply for a court warrant for entry into, and breaking in if necessary, any suspected unlicensed guesthouses for inspection; and

(5) to increase the maximum penalty for operating unlicensed guesthouses to a fine of $500,000 and imprisonment for three years, in the hope that the court would impose heavier sentences in future.

Recommendations

9. This Office generally supported HAD's improvement proposals. In addition, The Ombudsman urged the Department:

(1) should it decide to conduct local consultation when considering licence applications in future, to draw up reasonable and workable criteria for assessing residents' objections;

(2) to consider including compliance with land lease conditions as a licensing requirement; and

(3) to further enhance OLA's investigation of unlicensed guesthouses by conducting more decoy operations to obtain evidence in order to increase the effectiveness of its enforcement actions.



Hospital Authority ("HA")

Case No. OMB/DI/308

Management and Release of Patient Records by HA

(Investigation declared on 9 May 2013 and completed on 3 April 2014; full report available at www.ombudsman.hk)

Background

It is the policy of the Hospital Authority ("HA") to keep patient records for the purpose of providing patient care, and to release such records in a timely manner upon the patient's request. There are two main ways in which HA releases patient records:

(1) Public-Private Interface – Electronic Patient Record Sharing Pilot Project ("PPI-ePR project"): This is a project under which HA provides an electronic platform to enable enrolled private healthcare practitioners with the consent of a patient to access the latter's electronic medical records kept by HA. Expected processing time of applications from patients for enrolment in the project is two weeks.

(2) Data Access Request ("DAR scheme"): This is a scheme under which HA releases, subject to and in accordance with the Personal Data (Privacy) Ordinance, Cap. 486 ("the PDP Ordinance"), hard copies of a patient's records to the patient upon his request or to a third party subject to his consent. Under the PDP Ordinance and subject to its provisions, HA is required to comply with such requests within 40 days. However, the DAR application documents did not mention this requirement or any information about expected processing time.

2. A complaint case showed that a patient (Mr C) who applied in 2011 under the PPI-ePR project for his electronic records to be released to his private sector doctor before a surgical operation had to wait for more than 70 days before their release. This prompted us to investigate the magnitude of the problem and identify the improvements that could be made.

HA's Patient Record System

3. For keeping of patient records in HA's computerised record system, each patient is given an account identified by the number of his identity document. When a patient visits or is admitted to HA hospitals/clinics, these are recorded in his account as Episodes and given Episode numbers ("Episode No."). An Episode No., once created, is connected to a patient and, under normal circumstances, should not be used for any other patient.

4. However, there are a number of circumstances under which an Episode No. may be, or may need to be, moved from one account to another, including the following:

- A hospital re-using a patient's Episode No. for another patient by mistake.

- A patient using different identity documents at different times to obtain treatment at HA hospitals, e.g. at one time using his One Way Permit and at another his Hong Kong Identity Card.

- A patient using another person's (usually a relative's) Hong Kong Identity Card by mistake when seeking urgent treatment at the Accident and Emergency Department.

5. Under HA's system, whenever an Episode No. is moved from one patient account to another, Yellow Flags will be automatically triggered on both the "Move from" and "Move to" accounts. The Yellow Flags serve to indicate that the records may be corrupted and should be used with extra caution. Also, the Yellow Flags will bar the patient records concerned from being released under the PPI-ePR project. However, until October 2006, the Yellow Flags were not connected to any mechanism that would set in motion any rectification action.

Mr C's Complaint

6. In the case of Mr C, the long time taken in the processing of his PPI-ePR application was due to the following sequence of events:

- Back in June 2006, Mr C failed to attend an appointment at an HA hospital, Hospital C. In contravention of HA guidelines, Hospital C re-used the Episode No. allotted to him for another patient. This triggered a Yellow Flag on Mr C's account.

- Five years later, when Mr C applied for his records under the PPI-ePR project in April 2011, they were barred from being released by the Yellow Flag placed on the records.

- Only then did HA start to take action to verify his records, which were eventually released to him in July 2011, five weeks beyond the expected processing time of two weeks.

Deficiencies and Recommendations

7. Our investigation revealed four main deficiencies in HA's management and release of patient records, as detailed below.

I. Failure to Verify Possibly Corrupted Records in a Timely Manner

8. In Mr C's case, the lack of any action to verify possibly corrupted records for five years from 2006 to 2011 was due to a systemic deficiency when the Yellow Flag mechanism was created in early 2006, i.e. it was not connected to any mechanism to set in motion rectification action. This deficiency was remedied in October 2006 when HA improved the system to enable Yellow Flags to trigger rectification action. However, no action was taken on Yellow Flags raised before October 2006, as shown in Mr C's case. Nor was any deadline set for rectification action.

9. As our investigation proceeded, HA took steps in tandem to further improve the system, as follows:

- In January 2013 HA introduced deadlines for clearing Yellow Flags.

- In March 2013 HA further set up a Task Force to coordinate and monitor the clearing of Yellow Flags.

10. A total of more than 20,000 Yellow Flags had been raised since the introduction of the Yellow Flag mechanism in 2006. Under the Task Force, HA made progress in clearing them. As at October 2013, there were 2,233 Yellow Flags, comprising 2,122 cases substantially verified and ready to be cleared, and 111 cases on which further verification was necessary.

11. We considered that HA should keep up its work in this regard. For the more complicated cases the verification of which was expected to take a long time, HA should give consideration to practical stopgap measures such as releasing the records upon request with an appropriate remark pointing out the areas of uncertainty.

II. Insufficient Publicity for Doctor-to-doctor Communication

12. In the course of this investigation we noticed that some of HA's service targets for processing release of patient records might not be able to meet the demand of patients in urgent need, such as those wanting to seek a second medical opinion before an operation. The service targets causing us particular concern were:

- Processing of DAR applications: 40 days.

- Clearing of Yellow Flags involving different patients (which would impact on the processing of PPI-ePR applications): six weeks.

13. When we put our concern to HA, HA pointed out that in cases of urgent need, the patient's doctor in the private sector should contact the patient's HA doctor direct for information, i.e. doctor-to-doctor communication should be adopted. According to HA, as a matter of professional practice, such requests for information would be processed by HA doctors as soon as possible having regard to the circumstances of the case.

14. While we noted HA's position that doctor-to-doctor communication would be able to serve patients in urgent need, we observed that it was not sufficiently known among patients and members of the public. We recommended HA to give publicity to doctor-to-doctor communication, such as on its website, and in its application documents for PPI-ePR and DAR.

III. Ineffective Communication with Patients Seeking Release of Their Records

15. Our investigation revealed deficiencies in HA's communication with patients seeking release of their records. This was illustrated in the following:

- In Mr C's case, during the patient's long wait for his PPI-ePR approval, HA gave him little information that was useful or helpful, despite repeated requests from him and his sons. A letter from the patient's son was even left unanswered.

- DAR applicants were given no information about the possible processing time, nor the statutory requirement for HA to process DAR applications within 40 days.

16. We recommended that HA should adopt a more patient-oriented mindset in processing applications for release of patient records, including provision of clear information to patients on the expected processing time and advice on any alternative means of obtaining information for those in urgent need.

IV. Ineffective Communication between HA Headquarters and HA Hospitals

17. Our investigation revealed deficiencies in the internal communication between HA Headquarters and HA hospitals. This was illustrated in the following:

- In Mr C's case, despite HA Headquarters guidelines issued in 1995, until 2007/08 it was Hospital C's practice to re-use Episode Nos. for different patients, leading to patient records being corrupted.

- In other cases we studied, despite procedures introduced by HA Headquarters in 2006, until 2012 many HA hospitals were unclear of what was required when HA Headquarters asked them to verify data in connection with PPI-ePR applications. It was only in May 2012 that HA introduced measures to rectify this problem.

18. The occurrence of these problems suggested that guidelines issued by HA Headquarters were not always observed by individual hospitals, procedures laid down by HA Headquarters not always understood, and deadlines not always met. We recommended

that HA should consider reviewing its internal communication network/channels with a view to enhancing communication between HA Headquarters and individual hospitals.

Conclusion

19. HA should be given credit for taking prompt measures to address identified deficiencies in its Yellow Flag mechanism. However, there was room for improvement, particularly in respect of enhancing public awareness about doctor-to-doctor communication and enhancing communication with patients.



Housing Department ("HD") and Hong Kong Housing Society ("HKHS")

Case No. OMB/DI/331

Mechanisms Used to Review and Monitor Eligibility of Existing Tenants in Subsidised Public Housing

(Investigation declared on 12 June 2014 and completed on 23 January 2015; full report [Chinese version only] available at www.ombudsman.hk)

Background

The Hong Kong Housing Authority ("HKHA") and HKHS are two independent organisations providing public rental housing ("PRH") units. They have their own mechanism to vet the eligibility of applicants. There is also a coordination system between the two organisations to prevent existing PRH tenants from obtaining double housing subsidies.

2. Nevertheless, this Office noted from complaints received that some families have simultaneously occupied two PRH units under HD (the executive arm of HKHA) and HKHS respectively, but both organisations have failed to take prompt action to rectify the problem. Furthermore, some tenants who should have vacated their units under existing regulations for various reasons (such as divorce or transfer) were allowed to stay. Those loopholes, if not plugged, will compromise the fair allocation of valuable PRH resources and prolong the waiting time of those applicants on the Waiting List. Against this background, The Ombudsman initiated a direct investigation into the issue.

Our Findings

Improvement Needed in HD's and HKHS's Reporting and Coordination System

3. HD indicated that, to address the problem of dual tenant status, it would issue a monthly statement to inform HKHS of any double housing benefit cases involving HKHS tenants. However, after examining a number of cases, we found that HKHS had failed to detect the problem of dual tenant status for months, if not years. Even where HKHS had been notified of such cases, the problem still persisted for years because HKHS did not take timely action to follow up. Since the two organisations had no written agreement to delineate their respective responsibilities in dealing with different situations, neither HD nor HKHS took any positive steps to monitor the progress of the cases. Their coordination system had therefore failed to achieve the desired results.

HD and HKHS Too Tolerant in Handling Cases

4. In a number of cases, we found that HD and HKHS officers were too lax in handling cases of dual tenant status. During our investigation, both organisations expressed that they needed to handle the tenancy issue in a more "humane" manner. We have no objection to that. However, this should not mean that the two organisations should tolerate dual tenant status or allow tenants to continue to occupy PRH units against the rules for an extended period. Our investigation revealed that some cases actually took six to eight years to resolve, and any follow-up actions in the interim were few and far between. As a result, ineligible tenants were not removed from their PRH units, and some households were allowed to occupy PRH units with a size larger than their entitlements. Such cases reflected the lack of determination on the part of HD and HKHS in tackling irregularities, thereby indirectly condoning the abuse of PRH resources.

HD's Failure to Carefully Enforce Policy on Granting of New Tenancy ("GNT")

5. According to HKHA's website, the GNT Policy is mainly for allowing the surviving spouse to take over the tenancy of a PRH unit unconditionally upon the death of a principal tenant. Where there is no surviving spouse, a new tenancy may be granted to an authorised household member who has passed the Comprehensive Means Test. Nonetheless, HD informed us subsequently that under the GNT Policy, tenants may also request HD to grant a new tenancy on grounds "other than death of the principal tenant", such as emigration or transfer of the principal tenant. However, we noted that HD neither clearly defined the scope of those "other grounds", nor set out any guidelines for staff in examining applications for GNT on "other grounds".

6. In a number of cases cited in our investigation report, HD granted a new tenancy to other household members when the principal tenant was still alive, resulting in household splitting. One of the principles under the policy on household splitting is indeed aimed at preventing tenants from obtaining extra PRH resources without sufficient compassionate grounds. We took the view that a GNT policy which allows a principal tenant who is very much alive to transfer to another PRH unit through other means while a new tenancy for the original unit would be granted to the remaining household members, would create unfair situations. It was imperative for HD to scrutinise carefully those grounds "other than death of the principal tenant" before considering any GNT, so as to prevent existing tenants from abusing the GNT Policy to effectively achieve household splitting.

HKHS Lacking Concrete Measures to Ensure PRH Serving Only People of Low Means

7. In 2002, HKHS had studied the feasibility of implementing a Well-off Tenants Policy. The idea was, however, eventually scrapped owing to, inter alia, HKHS's lack of statutory powers to check the household income of its tenants. This hardly conformed to HKHS's objective of providing PRH to low-income/assets families. In fact, HKHS tenants would not violate the tenancy agreement even if they owned private properties or huge assets. HKHS could only "advise" such tenants to vacate their units. That clearly was inadequate in terms of efficacy.

8. HKHS took no effective measures (such as adding suitable clauses to the tenancy agreement) to restrict well-off tenants or those with private properties from occupying PRH units indefinitely. This ran counter to HKHS's objective and original intent of providing PRH to those of low income/assets levels, and was unfair to those in genuine need of subsidised housing.

Government Lacking Mechanism to Monitor HKHS's PRH Operations

9. The Transport and Housing Bureau ("THB") indicated that Government had neither the statutory powers nor a mechanism to monitor the operations of HKHS. Nor did THB have any policy documents relating to the monitoring of PRH provision by HKHS. We had reservations about such attitude of THB. Government has granted land on concessionary terms to HKHS for building PRH, such that HKHS could fulfil its mission of providing affordable housing for the low-income/assets households in line with Government's housing policies. Therefore, Government has the responsibility to ensure proper use of the land thus granted to HKHS. We considered THB to have a duty to discuss with HKHS, with a view to drawing up a written agreement to ensure that the objective of granting land on concessionary terms is achieved.

Application by PRH Principal Tenants for Another PRH Unit and the GNT Policy

10. Both HKHA and HKHS allowed an existing principal tenant of PRH to apply for another PRH unit, either on his/her own or jointly with other household members listed in the tenancy agreement. We took the view that, since existing principal tenants (usually the original PRH applicants) have basically been allocated a PRH unit, they should not have any genuine or urgent need for housing. Furthermore, if a principal tenant was no longer suitable to live in the current unit due to special societal or health reasons, they could apply for transfer based on such grounds. They could also apply to have a son/daughter and his/her spouse added to the tenancy to take care of them, if they so desired. With the current acute shortage of PRH, we considered such practices of HKHA and HKHS questionable, as it would affect the chance of getting an early allocation for those PRH applicants on the Waiting List who are in genuine and urgent need of housing.

11. As for HKHS, it allowed an authorised family member of the tenancy over 18 years old who could pass the assets test to become the principal tenant, without having to wait for their turn for an allocation like other PRH applicants. This was also unfair to those registered on the Waiting List.

Means Test under the GNT Policy

12. Under the GNT Policy, a household due to inherit the tenancy right of a PRH unit, despite their owning a property or huge assets, would still be granted a new tenancy so long as its household income does not exceed three times the Waiting List Income Limit ("WLIL"). Similarly, a household with an income more than three times the WLIL would still be granted a new tenancy if its net assets value does not exceed 84 times the WLIL. This seemed to deviate even further from the original intent that subsidised housing should be provided to those who cannot afford private accommodation. We considered that Government should thoroughly review whether those tenants with private properties should, both as a matter of principle

and a policy requirement, surrender their PRH units to HD for re-allocation to families with genuine housing need.

Recommendations

13. The Ombudsman made the following recommendations to the authorities concerned:

(1) HD and HKHS should enhance their reporting mechanism regarding double housing subsidies;

(2) HD and HKHS should step up staff training and improve the ability of their staff in handling cases involving tenants who have contravened laid down rules;

(3) for approved transfer cases and cases where the tenants' dual tenant status has been confirmed, HD should take the initiative to delete the tenants concerned from the old tenancies;

(4) HD and HKHS should set out clearer guidelines and notices to tenants to explain that there will be set timeframes for actions after repeated warnings are issued (e.g. notice of termination of tenancy). The two authorities should also ensure staff's strict compliance with those guidelines;

(5) except in special circumstances, HKHA and HKHS should consider not allowing principal tenants to apply for another PRH unit in order to prevent existing PRH tenants from circumventing the general Waiting List application procedures and getting another PRH unit;

(6) in enforcing the GNT Policy, HD should carefully examine cases where the principal tenant is still alive. Clear guidelines should be given to staff to prevent tenants from abusing the policy for the purpose of household splitting;

(7) HKHS may consider adopting administration measures by adding to the tenancy agreement a requirement of income and assets declaration, and requiring tenants whose income and assets exceed the prescribed limits after moving into the PRH unit to pay a well-off-tenant rent;

(8) THB should actively discuss with HKHS feasible measures and draw up a written agreement to ensure that public housing provided by HKHS is in line with Government's original intent of concessionary land grant and the relevant requirements in the land lease; and

(9) HD should collect and maintain the data on tenants whose income/assets exceed the prescribed limits and recommend HKHA to review its GNT Policy, including considering the need to require members of the household who inherit the tenancy to be subject to both the income and assets limits.



Working Family and Student Financial Assistance Agency (“WFSFAA”) (Formerly known as Student Financial Assistance Agency)

Case No. OMB/DI/305

Procedures for Approval of Loan Applications and Recovery of Debts under the Non-means-tested Loan Scheme

(Investigation declared on 3 October 2013 and completed on 6 January 2015; full report [Chinese version only] available at www.ombudsman.hk)

Background

The Non-means-tested Loan Scheme (“the Loan Scheme”) administered by WFSFAA serves to provide the public with financial assistance for continuing education. The total amount of loans granted is huge, as much as $1.3 billion per academic year, while the total amount in default has at some point reached $170 million. Some members of the public had complained to this Office, alleging that WFSFAA was lax in its debt recovery action against loan borrowers, such that the indemnifiers, as guarantors for the borrowers, were inflicted with the burden of paying the accumulated interests and the associated legal fees. In addition, media reports had revealed the following two problems:

(1) some borrowers had allegedly stolen the identity of others and named them as indemnifiers in loan applications; and

(2) the staff/agents of some education institutions had conspired with loan applicants/indemnifiers/witnesses to obtain loans by fraud using false information and documents.

2. In view of the above, The Ombudsman conducted this direct investigation to examine the procedures for approval of loan applications and recovery of debts under the Loan Scheme, with a view to identifying inadequacies.

Our Findings

3. Our findings were as follows.

Loan Schemes

4. There are three schemes under the Loan Scheme to cater for the needs of different categories of students, namely:

(1) Non-means-tested Loan Scheme for Full-time Tertiary Students (“the Full-time Tertiary Students Scheme”) for full-time students pursuing publicly-funded tertiary programmes;

(2) Non-means-tested Loan Scheme for Post-secondary Students (“the Post-secondary Students Scheme”) for students pursuing full-time accredited self-financing post-secondary programmes offered by various institutions; and

(3) Extended Non-means-tested Loan Scheme ("the Extended Scheme") for students pursuing specified part-time or full-time post-secondary/continuing and professional education courses.

Failure to Properly Manage the Default-prone Extended Scheme

5. Among the above three schemes, the Extended Scheme involves the highest management risks and has the most serious problem of default on loan repayment, partly because it covers a particularly wide range of education institutions and courses. Statistics of the 2011/12 to 2013/14 academic years showed that the Extended Scheme accounted for about 70% of all the default cases under the three schemes. Also, the amount in default under the Extended Scheme, standing at about $100 million, persistently exceeded half of the total amount overdue.

6. The Extended Scheme caters for students pursuing part-time or full-time post-secondary/ continuing and professional education courses. With many of the students actually in employment and hence having the ability to repay their loans, it was astonishing that the Scheme should have recorded such a serious default problem. WFSFAA should face this problem squarely by devising measures to reduce the credit risk of the Extended Scheme.

Lack of Effective Deterrent Measures

7. Under the current system, loan defaulters are asked to repay their debts with interests (their obligation anyway) and an administrative charge only. The deterrent effect is very weak.

8. We noted that WFSFAA had considered forwarding the negative credit data of serious defaulters to credit reference agencies for greater deterrent effect, the implication being that such defaulters would have to face difficulties in obtaining loans from banks or other financial institutions in future.

9. In principle we strongly supported WFSFAA's implementation of the above measure for the following major reasons:

(1) It is a long established and lawful practice for private financial institutions to forward the negative credit data of their loan defaulters to credit reference agencies. WFSFAA's function of granting loans to students is no different in nature from the business of private financial institutions in advancing credit to borrowers. The deterrent measure proposed by WFSFAA is indeed in line with the practice of private financial institutions and would not be unfair to loan applicants.

(2) The granting of non-means-tested loans to the public under the WFSFAA Loan Scheme is already very generous. We would not consider it harsh at all if WFSFAA was to require loan applicants to give it consent to forward their negative credit data to credit reference agencies in the event of their default on repayment.

10. Therefore, we hoped that WFSFAA could secure the agreement of the Privacy Commissioner for Personal Data ("PCPD") for putting the above measure into effect.

Failure to Fully Verify Indemnifiers' Intention

11. Applicants under the Loan Scheme are not subject to any income and assets assessment, nor are they required to provide any assets as collateral. The credit risk is rather high. If a borrower intentionally defaults on loan repayment or becomes insolvent, the Government can only resort to recovering the debt from his/her indemnifier.

12. WFSFAA can contact indemnifiers by telephone or face-to-face interview to verify their intention to act as indemnifiers as well as the loan amounts against which they agree to indemnify. However, in practice, WFSFAA contacted just a small percentage of the indemnifiers. For the loan applications under

the Full-time Tertiary Students Scheme and the Post-secondary Students Scheme, WFSFAA randomly selected only 10% and 5% respectively of the indemnifiers and contacted them by telephone. As for the Extended Scheme, WFSFAA telephoned nearly all the indemnifiers, but interviewed only a small percentage of them due to staff constraint. Although the number of indemnifiers interviewed in the 2013/14 academic year was higher than before, there were still only 391 of them, representing a scanty 5.42% of the loan applications received in the same year.

Need to Ensure Careful Vetting

13. The database in WFSFAA's computer system contains the details of each Loan Scheme account. Staff are required to extract information from the database and then check whether a loan applicant/indemnifier is the loan applicant/indemnifier of other scheme accounts and whether he/she has ever been a defaulter or a defaulter's indemnifier, thereby identifying cases of higher management risks. It can be seen that the checking process is not fully computerised and human errors are possible.

Recommendations

14. In the light of the above findings, The Ombudsman urged WFSFAA to:

(1) devise measures to reduce the credit risk of the Extended Scheme, such as suitably limiting the number of courses that a loan borrower may take and the number of loan applications that he/she may make in any academic year;

(2) further deliberate with PCPD, with a view to implementing as soon as possible the measure of forwarding the negative credit data of serious defaulters to credit reference agencies;

(3) deploy or increase staff to raise the percentage of indemnifiers contacted by telephone and interview;

(4) consider fully computerising its process of checking loan applicants/indemnifiers; and

(5) before full computerisation of the process, supervise staff closely to ensure that they conscientiously check whether loan applicants/indemnifiers are playing multiple roles and whether they have ever been defaulters or defaulters' indemnifiers.

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Agriculture, Fisheries and Conservation Department			
2014/0517H	Ill-advising the Town Planning Board with regard to a planning application	Unsubstantiated	0
2014/3604A	(1) Processing or having processed in a piecemeal manner applications on different works connected with the potential residential development on a lot (unsubstantiated); and (2) Failing to take enforcement actions under relevant legislation against the cutting of protected species of vegetation within a conservation area (unsubstantiated)	Unsubstantiated	1
Airport Authority			
2013/4752	Mishandling the complainant's report of a suspected theft at the Baggage Reclaim Hall of the airport and mishandling his subsequent enquiries	Substantiated	2
Architectural Services Department			
2014/2596	Delay in repairing the flush system of a public toilet	Unsubstantiated	2
Buildings Department			
2013/4551A	Failing to take enforcement action against an unauthorised building works item, which was part of a mobile base station, on the rooftop of a building	Unsubstantiated	0
2013/5032	(1) Failing to inform the complainant of case progress (unsubstantiated); (2) Failing to request a building management company to stop some building works (unsubstantiated); and (3) Wrongly identifying unauthorised building works items as minor works items (inconclusive)	Unsubstantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2013/5194B	(1) Shirking responsibility in handling a water seepage complaint (unsubstantiated); (2) Mishandling the seepage complaint (partially substantiated); (3) Poor handling of the seepage complaint by its staff (inconclusive); (4) Failing to contact the complainant through different means (substantiated); (5) Improper handling of the issuance of an advisory letter (unsubstantiated); and (6) Unreasonably issuing a repair order to the complainant while seepage persisted in his premises (unsubstantiated)	Partially substantiated	3
2014/0029B	Mishandling a water seepage complaint	Partially substantiated	1
2014/0134A	Failing to take enforcement action against unauthorised building structures extended from a small house	Unsubstantiated	0
2014/0517C	Ill-advising the Town Planning Board with regard to a planning application	Unsubstantiated	0
2014/0827A	Failing to properly follow up a complaint about unauthorised building works	Partially substantiated	1
2014/0844C	(1) Inconsistent replies to the complainant about the criteria of taking enforcement action against unauthorised building works (unsubstantiated); and (2) Delay in taking enforcement action against the unauthorised building works of a shop (unsubstantiated)	Unsubstantiated	1

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2014/1505A	(1) Delay in conducting re-inspection after ponding test, making referal and following up a complaint (substantiated); (2) Failure to send the copy of a letter to the complainant (partially substantiated); (3) Unreasonably sending the above letter to the owner of the upper flat (unsubstantiated); (4) Poor staff attitude in response to an enquiry and request (inconclusive); (5) Providing untrue information in its written reply (inconclusive); and (6) Failure to ask the staff concerned to respond to a staff complaint (unsubstantiated but other inadequacies found)	Partially substantiated	2
2014/1518A	Failing to properly follow up a complaint about unauthorised building works	Unsubstantiated	0
2014/2094B	(1) Delay in handling a seepage complaint (unsubstantiated); (2) Having errors in the course of seepage investigation (unsubstantiated); and (3) Failing to provide timely replies to the complainants (unsubstantiated)	Unsubstantiated	0
2014/3009A	Failing to take proper enforcement action against an unauthorised building structure under construction on a private lot	Partially substantiated	2
2014/3485	(1) Failing to inspect the complainant's flat upon her request for an exemption to carry out the prescribed inspection and repair required by a statutory notice issued under the Mandatory Window Inspection Scheme (unsubstantiated); (2) Unreasonably refusing the complainant's request for the exemption (unsubstantiated); and (3) Failing to ensure that the repair works proposed by a contractor were necessary (unsubstantiated)	Unsubstantiated	1
2014/3615B	Delay in following up a water seepage complaint	Substantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2014/3716A	Improperly issuing an "Occupation Permit" to the extended wing of a private school, which was an unauthorised building works item, and failing to take enforcement action against the irregularities	Unsubstantiated	0
2014/3791B	(1) Shirking responsibility in handling a seepage complaint (unsubstantiated); (2) Delay in handling a seepage complaint (substantiated); (3) Failing to send a substantive reply to the complainant (unsubstantiated); and (4) Unable to identify the source of seepage (unsubstantiated)	Partially substantiated	2
2014/5586A	(1) Unreasonably requiring the complainant to remove a shopfront retractable awning, but not taking enforcement action against a wall, an unauthorised building works item, of a restaurant (unsubstantiated); (2) Dereliction of duty in not objecting to the applications for renewal of the restaurant licence, given the existence of the wall (unsubstantiated); and (3) Failing to investigate into the complainant's complaint thoroughly (unsubstantiated)	Unsubstantiated	0
Civil Engineering and Development Department			
2014/0517D	Ill-advising the Town Planning Board with regard to a planning application	Unsubstantiated	0
2014/1510A	Delay in repairing a registered slope	Unsubstantiated	0
Companies Registry			
2014/0922	(1) Delay in handling the complainant's application for company registration (unsubstantiated); and (2) Taking into consideration irrelevant factors such as political causes in handling the application (unsubstantiated)	Unsubstantiated	0
2014/3114B	Failing to notify the complainant that his company had been deregistered	Unsubstantiated	0

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Consumer Council			
2014/2678 2014/2690 2014/2691 2014/2692 and others	Improperly publishing a survey on tipping for outbound packaged holidays tours	Unsubstantiated	0
Correctional Services Department			
2013/4293	Failing to properly handle a staff complaint	Unsubstantiated	0
2014/1342	Failing to provide assistance to an inmate who was allegedly suffering from an asthma attack	Inconclusive	0
2014/3197	Inflexible mechanism and improper arrangements in handling "approved hand-in articles" from visitors to persons in custody	Unsubstantiated	0
2014/3589	Failing to properly handle and make proper arrangements in respect of the complainant's psychiatric condition	Unsubstantiated	0
Customs and Excise Department			
2013/5376	Refusing to take action on a report about a short-weight offence	Substantiated	0
2014/0860	Delay and improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Partially substantiated	2
2014/0899	Improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Partially substantiated	0
2014/0908	Improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Partially substantiated	0
2014/1857	Delay and improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Partially substantiated	0
2014/2604C	Failing to take enforcement action against an illegal filling station	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Environmental Protection Department			
2013/3893A	(1) Failing to take due actions to resolve the odour problem caused by a food factory (unsubstantiated); and (2) Wrongly granting a food factory licence to the food factory despite its non-compliance with the licensing conditions (unsubstantiated)	Unsubstantiated	0
2013/5253B	Ineffective control over the organisers of the Yu Lan Ghost Festival and failing to collect scientific data on-site for understanding the effects of pollution caused by the activities on nearby residents' health	Unsubstantiated	0
2014/0517B	Ill-advising the Town Planning Board with regard to a planning application	Unsubstantiated	0
2014/1685A	Imprudent approving of night-time works, resulting in noise nuisance to nearby residents	Partially substantiated	1
2014/1989(I)	Unreasonably refusing to provide asbestos related investigation and test reports prepared by a public utility company	Substantiated	2
2014/2432B	Unreasonably rejecting the complainant's application under the Ex-gratia Payment Scheme for Phasing Out Pre-Euro IV Diesel Commercial Vehicles	Unsubstantiated	3
2014/3317A	Unreasonably rejecting the complainant's application under the Ex-gratia Payment Scheme for Phasing Out Pre-Euro IV Diesel Commercial Vehicles	Unsubstantiated	3

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2014/3604B	(1) Processing or having processed in a piecemeal manner applications on different works connected with the potential residential development on a lot (unsubstantiated); (2) Not taking actions to ensure that the requirements of relevant legislation were followed by the owner of the lot, despite repeated reports received (unsubstantiated); (3) Not taking enforcement actions under relevant legislation against the removal of vegetation in a conservation area despite repeated reports received (unsubstantiated); (4) Not replying to the complainant's letters (substantiated); and (5) Failing to take actions to prevent further damage to the conservation area caused by the potential residential development on the lot and its related works (unsubstantiated)	Partially substantiated	2
2014/3724B	Unreasonably rejecting the complainant's application under the Ex-gratia Payment Scheme for Phasing Out Pre-Euro IV Diesel Commercial Vehicles	Unsubstantiated	3
Estate Agents Authority			
2014/3235A	Unreasonably refusing the complainant's request for mark adjustment due to special circumstances	Unsubstantiated	0
Fire Services Department			
2014/0517G	Ill-advising the Town Planning Board with regard to a planning application	Unsubstantiated	0
2014/1757A	Improperly removing the complainant from her hotel room and taking her to a hospital	Unsubstantiated	0
2014/2604B	Failing to take enforcement action against an illegal filling action	Unsubstantiated	0
2014/3288B	Failing to take effective enforcement actions to tackle the problem of obstruction of the means of escape in an industrial building	Unsubstantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Food and Environmental Hygiene Department			
2013/3893B	Failing to take due actions to resolve the odour problem caused by a food factory	Unsubstantiated	0
2013/5194A	Shirking responsibility in handling a water seepage complaint	Unsubstantiated	2
2014/0029A	Mishandling a water seepage complaint	Unsubstantiated	0
2014/0636	(1) Requesting to enter the complainant's premises more than once with the same warrant of entry (unsubstantiated); (2) Failing to explore other possible sources of water seepage (unsubstantiated); and (3) Failing to explain to the owner of the suspected premises the procedures for investigating water seepage (unsubstantiated)	Unsubstantiated	1
2014/0644	Failing to tackle the environmental nuisance problem caused by refuse dumped in an open space	Substantiated	3
2014/0736	(1) Letting out stalls in Cheung Chau market without public tendering (unsubstantiated); and (2) Failing to take action against the stall tenants who used their stalls as storerooms rather than for retail purposes (unsubstantiated)	Unsubstantiated	1
2014/0844A	Failing to take effective enforcement action against the unauthorised extension, street obstruction and illegal hawking activities of a shop	Partially substantiated	2
2014/1505B	(1) Delay in following up a complaint (substantiated); and (2) Providing untrue information in its written reply (inconclusive)	Partially substantiated	1
2014/1678	Unfairly refusing to make available the remaining niches at Cheung Chau Columbarium for application by residents of other districts	Unsubstantiated	1
2014/1827	Failing to tackle the environmental hygiene problem caused by the trade waste of shops and restaurants left on both sides of two streets	Unsubstantiated	1

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2014/1987A	Failing to take enforcement action against a fruit shop which occupied part of the pavement for an extended period	Partially substantiated	1
2014/2085	Improper arrangements for allocation of columbarium niches	Substantiated	1
2014/2094A	(1) Delay in handling a seepage complaint (partially substantiated); (2) Having errors in the course of seepage investigation (partially substantiated); and (3) Failing to provide timely replies to the complainants (unsubstantiated)	Partially substantiated	2
2014/2249	Failing to tackle the problem of illegal parking in a loading and unloading bay area in a market	Partially substantiated	2
2014/2660A	Failing to take enforcement action against illegal extension of business areas with platforms by some shops	Partially substantiated	1
2014/2894A	Failing to take enforcement action against pavement obstruction caused by a recycling company	Partially substantiated	1
2014/2929A	Shifting responsibility to the Water Supplies Department in handling a water seepage complaint	Substantiated	2
2014/2998A	(1) Mishandling a complaint about street obstruction and hygiene problem caused by a shop (unsubstantiated); and (2) Failing to respond to the enquiry of a complainant (inconclusive)	Unsubstantiated	0
2014/3151A	Ineffectiveness in handling a complaint about illegal occupation of a footbridge by street sleepers	Unsubstantiated	0
2014/3288A	Failing to take effective enforcement actions against an unlicensed cooked food stall	Partially substantiated	1
2014/3615A	Delay in following up a water seepage complaint	Unsubstantiated	0
2014/3788	Failing to handle properly a report about a bird's nest in a market, resulting in the illegal removal of the nest	Unsubstantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2014/3791A	(1) Shirking responsibility in handling a seepage complaint (unsubstantiated); (2) Delay in handling a seepage complaint (unsubstantiated); (3) Failing to send substantive reply to the complainant (unsubstantiated); and (4) Unable to identify the source of seepage (unsubstantiated)	Unsubstantiated	0
2014/3797	Failing to take effective measures to tackle the problem of passageway obstruction caused by some stalls in a market	Partially substantiated	1
2014/3905	Failing to take effective enforcement action against the street obstruction problem caused by photography stalls	Partially substantiated	2
2014/3924	Failing to take effective enforcement action against the street obstruction problem caused by photography stalls	Partially substantiated	2
2014/4330	(1) Refusing to view the evidence produced by the complainant of water dripping from an air-conditioner (inconclusive); (2) Conducting inspections only during office hours (substantiated); and (3) Delay in gaining access to the flat under complaint (substantiated)	Partially substantiated	1
2014/4999	(1) Failing to take action against the street obstruction problem caused by a shop (partially substantiated); and (2) Failing to keep the complainant informed of the case progress and outcome (substantiated)	Partially substantiated	1
2014/5151A	Failing to handle effectively a complaint about illegal occupation of a subway by street sleepers	Unsubstantiated	1
2014/5586B	(1) Wrongly renewing the licence for a restaurant, given the existence of a wall which was an unauthorised building works item (unsubstantiated); and (2) Failing to investigate the complainant's complaint thoroughly (unsubstantiated)	Unsubstantiated	0
Government Secretariat – Chief Secretary for Administration's Office			
2013/4614A	Failing to properly handle a complaint about unauthorised construction works on Government land	Unsubstantiated	0

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Government Secretariat – Commerce and Economic Development Bureau			
2014/0517K	Ill-advising the Town Planning Board with regard to a planning application	Unsubstantiated	0
Government Secretariat – Development Bureau			
2014/0517J	Ill-advising the Town Planning Board with regard to a planning application	Unsubstantiated	0
Government Secretariat – Education Bureau			
2013/5278(I)	(1) Failing to properly investigate a complaint about an unlicensed tutorial centre (unsubstantiated but other inadequacies found); and (2) Unreasonably refusing to provide the complainant with its inspection dates (substantiated)	Partially substantiated	2
2014/1909	Improperly handling a teacher's complaint against a school for unreasonably issuing a verbal warning, a written warning and a termination notice to her	Unsubstantiated	0
2014/3570A	Unreasonably refusing the complainant's application for registration as child care worker and poor staff attitude	Partially substantiated	1
Government Secretariat – Food and Health Bureau			
2013/2561(I)	(1) Failing to reply to the complainant's enquiries on whether a particular brand of milk powder was under export restriction (substantiated); and (2) Refusing to release the list of milk powder under export restriction for public reference (substantiated)	Substantiated	2
2014/3465(I)	Failure to provide the requested information pertaining to a meeting in Chengdu in March 2013 attended by delegates of the Bureau	Partially substantiated	1
2014/3773	Failing to provide adequate public dental services to the elderly	Unsubstantiated	1
Government Secretariat – Security Bureau			
2014/3164(I)	Refusing to provide the complainant with information regarding the polls conducted for the Rescue Drug Testing Scheme	Substantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Government Secretariat - Transport and Housing Bureau			
2014/1924A	Delay in processing an application for public rental housing	Unsubstantiated	0
Highways Department			
2013/4705B	Ineffective control over the MTR Corporation and its contractor and failing to set up an effective mechanism to tackle the problem of unauthorised traffic control measures by the contractor	Unsubstantiated	0
2014/2228A	(1) Inappropriately approving an excavation permit without considering the traffic safety problem caused by the temporary traffic arrangement (unsubstantiated); and (2) Delay in taking remedial action to rectify the traffic safety problem (unsubstantiated)	Unsubstantiated	0
Home Affairs Department			
2014/0097	(1) Failing to give advance notice of the issuance of number chips for distribution of admission tickets to a public forum (unsubstantiated); and (2) Unreasonable queuing arrangements (partially substantiated)	Partially substantiated	1
Hong Kong Examinations and Assessment Authority			
2014/3235B	(1) Unreasonably refusing by the Centre Supervisor/an invigilator the complainant’s request for a change of her seat during an examination (unsubstantiated); (2) Compiling untrue centre reports by the Centre Supervisors (unsubstantiated); and (3) Failing to supervise adequately the Centre Supervisor/invigilators (unsubstantiated)	Unsubstantiated	0
Hong Kong Housing Authority			
2014/1924B	Delay in processing an application for public rental housing	Unsubstantiated	0
Hong Kong Housing Society			
2014/1836(R)	Unreasonably refusing to provide the policy document on taking over of public housing tenancy	Substantiated	3

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Hong Kong Monetary Authority			
2014/1548	(1) Failing to instruct the staff concerned to record and convey the complainant's message as undertaken (substantiated); (2) Unreasonably requiring the complainant to provide case details (unsubstantiated); (3) Unreasonably requesting the complainant to put her enquiry in writing (substantiated); (4) Improperly keeping the information of a complaint lodged more than seven years ago (unsubstantiated); (5) Failing to acknowledge receipt of complaint (substantiated); and (6) Delay in responding to the complainant (substantiated)	Partially substantiated	2
Hospital Authority			
2013/4316	(1) Refusing to consider the ambulance record of the complainant's late husband to rectify his inaccurate medial report (unsubstantiated); and (2) Delay in informing the complainant of the reason for not obtaining the ambulance record and the way for her to obtain the record (substantiated)	Partially substantiated	1
2013/4349	(1) Faulty procedures and unreasonable decisions in favour of a particular bidder in two tender exercises for procurement of laboratory equipment (unsubstantiated); and (2) Unreasonably cancelling the first tender exercise without addressing the complainant's dissatisfaction (partially substantiated)	Partially substantiated	2
2014/0859	Failing to put in place an effective mechanism to prevent the potential conflict of interest faced by doctors	Substantiated	4
2014/1686B	Unreasonably assessing the complainant's brother as not eligible for Higher Disability Allowance, resulting in unfair and non-uniform treatment	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2014/1815(R)	(1) Failing to provide the relevant link to and application form for the Code on Access to Information in a hospital's website (unsubstantiated); (2) Improperly refusing the complainant's access to information request (substantiated); (3) Delay in reply (unsubstantiated); (4) Citing inaccurate reasons to reject her information requests (unsubstantiated); (5) Failing to explain the reason for rejecting her information request (partially substantiated); (6) Failing to provide the procedure and names of officers in handling her complaint (substantiated); and (7) Failing to mention the appeal channel in the reply (unsubstantiated)	Partially substantiated	3
Housing Department			
2013/3259	Failing to properly attend to the complainant's request for retention and release of lift surveillance footage	Substantiated	1
2013/3845	Unreasonably deleting the complainant's status as one of the tenants of a public rental housing unit	Unsubstantiated	1
2013/4067	(1) Unreasonably refusing to grant public housing tenant status to a tenant's brother to allow him to stay in the flat and take care of the tenant (unsubstantiated); (2) Failing to take into account the living space for the tenant's minder in re-allocation of flat (unsubstantiated); (3) Delay in processing the tenant's application for special transfer (unsubstantiated); (4) Delay in carrying out modification works at the newly allocated flat (unsubstantiated); and (5) Delay in processing the tenant's application to purchase the flat (unsubstantiated)	Unsubstantiated	1
2013/5290	(1) Failing to strictly control the use of an emergency vehicular access by vehicles (partially substantiated); and (2) Failing to provide the complainant with a substantive reply (unsubstantiated)	Partially substantiated	1

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2013/5292	(1) Causing nuisance to the complainant by repeatedly taking photographs of her public housing flat and requesting her to dispose of her furniture (unsubstantiated); and (2) Improperly allocating an old flat to the complainant in respect of her application for transfer to another public housing flat (unsubstantiated)	Unsubstantiated	0
2014/0029C	Failing to take enforcement actions against unauthorised building works in a Tenants Purchase Scheme flat	Unsubstantiated but other inadequacies found	1
2014/0683	(1) Improper handling of certain backflow incidents (unsubstantiated); (2) Poor staff manner (inconclusive); and (3) Inconsistent replies about application for housing transfer (unsubstantiated)	Unsubstantiated	0
2014/1442	(1) Failure to provide information on various types of stamp duty to prospective buyers under the Tenants Purchase Scheme (substantiated); and (2) Misleading the complainants, thereby causing them to pay more in stamp duty (inconclusive)	Partially substantiated	0
2014/1868	Unreasonably refusing to allocate an interim housing unit to the complainant who moved out due to domestic violence	Unsubstantiated	0
2014/1924C	Delay in processing an application for public rental housing	Unsubstantiated	0
2014/2998B	Mishandling a complaint about street obstruction and hygiene problem caused by a shop	Unsubstantiated	0
2014/3791C	(1) Shirking responsibility in handling a seepage complaint (unsubstantiated); and (2) Refusing to send a substantive reply to the complainant and poor staff attitude (unsubstantiated)	Unsubstantiated	0
2014/4012	Failing to take effective measures to prevent improper operations of shops in a public housing estate and poor staff attitude	Partially substantiated	5

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Immigration Department			
2013/5351	Disparity in treatment and unreasonably refusing the complainant's applications under the Admission Scheme for Mainland Talents and Professionals	Unsubstantiated	0
Inland Revenue Department			
2013/4151	Unreasonably taking tax recovery actions against the complainant	Substantiated	1
2014/3114A	Unreasonably limiting the refund of business registration fees to the previous six years pursuant to the Limitation Ordinance	Unsubstantiated	0
Judiciary Administrator			
2013/4726A	Improper handling of the complainant's applications for transcripts and records of court proceedings	Partially substantiated	2
2013/5280B	Unreasonably prosecuting the complainant for failing to complete the driving improvement course despite that her disqualification from driving order had been suspended by High Court	Unsubstantiated	0
Land Registry			
2014/4074(I)	Unreasonably refusing the complainant's application for land search by the name of her deceased father who did not possess a Hong Kong identity card	Unsubstantiated	0
Lands Department			
2013/2296B	Evasion of responsibility for maintenance and repairs of waterworks installations	Partially substantiated	1
2013/3366	Delay in removing two rotten trees that were in danger of collapse	Substantiated	1
2013/4347	Delay in handling an application for temporary use of a piece of Government land	Substantiated	3
2013/4551B	Failing to take enforcement action against the installations of mobile base stations on the rooftop of a residential building where such installations contravened the terms and conditions of a Government lease	Unsubstantiated	0

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2013/4614B	Delay in following up a complaint about unauthorised construction works on Government land	Substantiated	1
2013/5090	Wrongly felling a tree without having tried to rescue it or consulted the relevant Village Representatives	Unsubstantiated but other inadequacies found	1
2013/5304	Renewing a short-term tenancy with a company without open tender	Unsubstantiated	1
2013/5313	Failing to enforce an undertaking to keep open a footpath, which was the only access to the complainant's private lot	Unsubstantiated	0
2014/0134B	Failing to take enforcement action against unauthorised building structures extended from a small house	Unsubstantiated	0
2014/0459(I)	Refusing to provide the complainant with the reports prepared by other department and organisation with respect to an application for building village houses	Partially substantiated	2
2014/0517E	Ill-advising the Town Planning Board with regard to a planning application	Unsubstantiated	0
2014/0827B	Failing to properly follow up a complaint about illegal occupation of Government land	Partially substantiated	2
2014/0844B	(1) Delay in taking enforcement action against illegal occupation of Government land by a shop (unsubstantiated); and (2) Delay in replying to a complaint (partially substantiated)	Partially substantiated	0
2014/1203	(1) Failing to inspect the land to be resumed (including part of the complainant's land) after gazetting the notice of proposed resumption of land for sewerage works (unsubstantiated); (2) Failing to register the notice of proposed resumption of land in the Land Register in respect of the complainant's land (unsubstantiated); and (3) Failing to provide the complainant with the land resumption plan (inconclusive)	Unsubstantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2014/1510B	Delay in repairing a registered slope	Unsubstantiated	0
2014/1518B	Failing to properly follow up a complaint about illegal occupation of Government land	Unsubstantiated	0
2014/1818	Delay in handling the complainant's application for the Modification of Tenancy and Certificate of Exemptions	Substantiated	1
2014/1987B	Failing to take enforcement action against a fruit shop which occupied part of the pavement for an extended period	Unsubstantiated	1
2014/2033	(1) Failing to provide an explanation on the calculation of the revised rental of a short-term tenancy (unsubstantiated); and (2) Failing to respond to the complainant's request (unsubstantiated)	Unsubstantiated	0
2014/2143	Delay in taking clearance action against a wall stall adhered to a building	Unsubstantiated	1
2014/2461 2014/2462 2014/2463 2014/2464 and others	Improper processing of seven small house applications	Unsubstantiated	0
2014/2604A	Failing to take enforcement action against an illegal filling station	Unsubstantiated	0
2014/2660B	Failing to take enforcement action against illegal occupation of Government land with platforms by some shops	Substantiated	0
2014/2894B	Failing to take enforcement action against illegal occupation of Government land by a recycling company	Unsubstantiated	1
2014/3009B	Failing to take proper enforcement action against an unauthorised building structure on a private lot	Unsubstantiated	1

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2014/3604C	(1) Processing or having processed in a piecemeal manner applications on different works connected with the potential residential development on a lot (unsubstantiated but other inadequacies found); (2) Approving unnecessary removal of vegetation notwithstanding the requirements of relevant legislation (unsubstantiated); (3) Allowing the erection of steel bars on Government land in a conservation area to mark out a potential road notwithstanding the requirements of relevant legislation (unsubstantiated); (4) Not replying to the complainant's letter (substantiated); and (5) Failing to take actions to prevent further damage to the conservation area caused by the potential residential development on the lot and its related works (unsubstantiated)	Unsubstantiated but other inadequacies found	3
2014/3716B	Failing to take land control and enforcement action against the extended wing of a private school, which had breached certain land lease conditions and was unauthorised building works	Unsubstantiated	0
2014/4322(I)	(1) Inaccuracy in recording the particulars of a certain structure in the surveyed squatter control record and impropriety in handling an investigation related to the structure (partially substantiated); and (2) Unreasonably refusing to provide the complainant with squatter control record related to the subject structure (partially substantiated)	Partially substantiated	2
Leisure and Cultural Services Department			
2013/3429	Failing to take due consideration in approving organisations to hold the Yu Lan Ghost Festival, thereby causing noise nuisance to nearby residents	Substantiated	5
2013/3437	Refusing the complainant's application to use an indoor sports centre for the purpose of roller skating	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2013/4770	Failing to handle the complainant's injury case at a public swimming pool and his subsequent claim for compensation	Unsubstantiated	0
2013/5253A	Ineffective control over the organisers of the Yu Lan Ghost Festival and failing to collect scientific data on-site for understanding the effects of pollution caused by the activities on nearby residents' health	Substantiated	3
2014/0517I	Ill-advising the Town Planning Board with regard to a planning application	Unsubstantiated	0
2014/3210	(1) Providing a substandard basketball court (substantiated); (2) Unreasonably refusing to make a refund (unsubstantiated); and (3) Failing to tackle the substandard problem promptly and notify the hirers (unsubstantiated)	Partially substantiated	0
Mandatory Provident Fund Schemes Authority			
2014/1559	(1) Failing to clearly explain the reason for not initiating prosecution (substantiated); and (2) Delay in handling the complainant's case (unsubstantiated)	Partially substantiated	1
2014/3137	(1) Unreasonably requesting the complainant to pay a contribution surcharge while having failed to request the trustee to provide proof of the date of receiving the contribution from the complainant (substantiated); (2) Failing to explain to the complainant about the reasons of a complaint being classified as unsubstantiated (substantiated); (3) Lack of an independent appeal mechanism against its decision (unsubstantiated); (4) Failing to inform the complainant about the progress of a staff complaint (unsubstantiated); and (5) Lack of independent individuals to handle staff complaints (unsubstantiated)	Partially substantiated	3

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Marine Department			
2013/3794	(1) Negligence in inspecting a vessel (unsubstantiated); and (2) Giving preferential treatment to the former owner of the vessel in its application for a Certificate of Survey and providing fraudulent information in the certificate (unsubstantiated)	Unsubstantiated	2
Office of the Communications Authority			
2013/4551C	Wrongly approving the installations of mobile base stations on the rooftop of a residential building without prior approval of the relevant authorities	Unsubstantiated	0
Official Receiver's Office			
2013/4046(I)	Wrongly rejecting a request for a copy of a letter	Substantiated	0
2014/4514	(1) Unreasonably selling the complainant's interest in a flat after his discharge of bankruptcy (unsubstantiated); (2) Unreasonably selling the complainant's interest in a flat when no repayment of debts was required by his debtors (unsubstantiated); and (3) Rude manners of staff (inconclusive)	Unsubstantiated	1
Planning Department			
2014/0517F	Ill-advising the Town Planning Board with regard to a planning application	Unsubstantiated	0
Post Office			
2012/1292	Mishandling an application for mail redirection service	Unsubstantiated but other inadequacies found	0
2013/3919	Delay in handling an outbound air mail item	Partially substantiated	0
2013/4059	Delay in handling an outbound air mail item	Partially substantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Privacy Commissioner for Personal Data			
2014/4628	Delay in handling the complainant's complaint	Unsubstantiated	0
Social Welfare Department			
2014/1628(I)	Refusing to provide details of the bank account of the complainant's late brother for Comprehensive Social Security Assistance	Unsubstantiated	0
2014/3151B	Ineffectiveness in handling a complaint about illegal occupation of a footbridge by street sleepers	Unsubstantiated	0
2014/3570B	Unreasonably refusing the complainant's application for registration as child care worker and poor staff attitude	Unsubstantiated	0
2014/5151B	Failing to handle effectively a complaint about illegal occupation of a subway by street sleepers	Unsubstantiated	2
Trade and Industry Department			
2014/3373	(1) Unreasonably accusing the complainant of failing to declare the interests he personally obtained in a Small and Medium Enterprises Development Fund aided project (unsubstantiated); and (2) Rejecting an application for the Small and Medium Enterprises Development Fund with different reasons at different times without justification (unsubstantiated)	Unsubstantiated	0
Transport Department			
2013/3722	Failing to provide adequate public transportation services at the Lok Ma Chau Control Point	Unsubstantiated	0
2013/4705A	Ineffective control over the MTR Corporation and its contractor and failing to set up an effective mechanism to tackle the problem of unauthorised traffic control measures by the contractor	Unsubstantiated	0
2013/5280A	Unreasonably prosecuting the complainant for failing to complete the driving improvement course despite that her disqualification from driving order had been suspended by High Court	Substantiated	2

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2014/0517A(I)	Ill-advising the Town Planning Board with regard to a planning application and breaching the Code on Access to Information	Unsubstantiated	0
2014/0619	(1) Delay in opening the lift and escalator at a historical building for public use (unsubstantiated); and (2) Failing to respond to the complainant's enquiry (unsubstantiated)	Unsubstantiated	1
2014/2228B	(1) Inappropriately approving a temporary traffic arrangement which led to traffic safety problem (unsubstantiated); and (2) Inappropriately changing the location of a bus stop (unsubstantiated)	Unsubstantiated	0
2014/2432A	Unreasonably rejecting the complainant's application under the Ex-gratia Payment Scheme for Phasing Out Pre-Euro IV Diesel Commercial Vehicles	Unsubstantiated but other inadequacies found	5
2014/3317B	Unreasonably rejecting the complainant's application under the Ex-gratia Payment Scheme for Phasing Out Pre-Euro IV Diesel Commercial Vehicles	Unsubstantiated	5
2014/3724A	Unreasonably rejecting the complainant's application under the Ex-gratia Payment Scheme for Phasing Out Pre-Euro IV Diesel Commercial Vehicles	Unsubstantiated	5
Urban Renewal Authority			
2014/4732(R)	(1) Unreasonably refusing the complainant's request for a copy of valuation reports (substantiated); and (2) Providing wrong information in response to the complainant's enquiry (unsubstantiated)	Substantiated	3
Water Supplies Department			
2013/2296A	Evasion of responsibility for maintenance and repairs of waterworks installations	Substantiated	2
2013/4879	Inappropriately issuing a certificate under the Quality Water Recognition Scheme for Buildings to the owners' committee of a residential building	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2014/1644	Unreasonably refusing an application for erection of a small house	Unsubstantiated but other inadequacies found	1
2014/1685B	Inefficient night-time works, resulting in noise nuisance to nearby residents	Unsubstantiated but other inadequacies found	1
2014/2929B	Shifting responsibility to the Food and Environmental Hygiene Department in handling a water seepage complaint	Substantiated	3



Airport Authority ("AA")

Case No. OMB 2013/4752 – Surveillance cameras

Allegation: mishandling of enquiries about CCTV System – substantiated

Details of Complaint

The complainant witnessed a suspected theft at the Baggage Reclaim Hall of the airport and alerted the airport staff nearby, who allegedly took no action. The suspect fled and the complainant later reported the matter to the Police.

2. Dissatisfied with the airport staff's inaction, the complainant wrote to AA and enquired whether the Closed Circuit Television ("CCTV") cameras at the Baggage Reclaim Hall had recorded the incident. The same question was subsequently raised by a Legislative Council ("LegCo") Member on his behalf. While AA staff told him the CCTV cameras were for real time surveillance only and that the identity of the staff under complaint could not be confirmed, AA's reply to the LegCo Member stated that those cameras were equipped with recording functions. Considering the replies inconsistent, the complainant queried the honesty of the staff concerned and doubted if AA was trying to cover up its staff's inaction.

Our Findings

3. The CCTV system at the airport was installed for safety, security and operation monitoring. AA had established internal guidelines to safeguard data privacy and prevent misuse of CCTV video images. Besides, it had a non-disclosure policy on information such as the locations of CCTV cameras to avoid compromising the effectiveness of surveillance.

4. Regarding telephone requests from the public for CCTV records, AA had prepared response guidelines for staff in its training material, under the CCTV internal policy, which covered, *inter alia*, the answer that "CCTVs are used for real time surveillance only". Nevertheless, AA also instructed in the same internal policy that the responsible staff should exercise discretion in case the CCTV footage requested may assist crime/incident investigation.

5. It was only on receipt of a LegCo question about the CCTV system that AA reviewed the said response guidelines and decided to disclose that those cameras were equipped with recording functions.

6. In the said complaint, AA considered the staff concerned to have adhered to the non-disclosure policy in telling the complainant that the CCTV cameras were for real time surveillance. However, AA admitted that it should have proactively notified the complainant of the new response after the aforesaid review. In its email responding to the complainant's query about dishonesty, AA said, for the sake of comforting the complainant "in the best of customer service recovery", that "the staff concerned who were not honest in this instance had been suitably admonished".

7. In handling the complainant's report of crime, AA had made extensive enquiries with the airport staff on duty, contacted the Police and confirmed that the Police would follow up the case. Assuming that the CCTV footage would be viewed by the Police, the staff handling the complaint decided not to view the footage or retain it until the Police investigation was over. AA admitted that the staff should have exercised

discretion to view the footage and that, as such, there was room for improvement. AA started a review of the handling procedures for similar situations.

Our Comments

8. The CCTV cameras at the Baggage Reclaim Hall do indeed have recording functions. AA's instruction to staff about the standard response, i.e. "CCTVs are used for real time surveillance only" did not give a true picture. The staff's reply to the complainant's enquiries, in line with AA's standard response, was therefore false. That said, the staff were following AA's instructions. AA's statement that the staff concerned were not honest was, therefore, grossly unfair.

9. We consider knowingly constructing a standard response which contains false information totally unacceptable. Furthermore, we consider it unjust to put the blame on the staff when the dishonesty actually originated from the management. Such gross act of injustice could not be justified on grounds of good customer service. The readiness of AA's management not to tell the exact truth and their misapplication of the concept of customer service was worrying and must be corrected.

10. Lying to the public, whatever the motive, is unacceptable. Asking its staff to accept a charge of dishonesty for the sake of appeasing a complainant is unthinkable. In this connection, AA must revamp its training, both at management level and at front line staff level, to uphold its integrity and credibility.

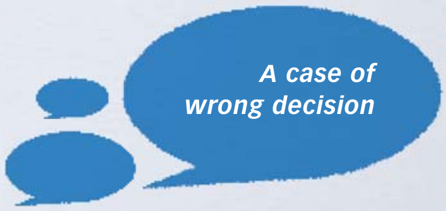
Conclusion and Recommendations

11. In view of the above, The Ombudsman considered the complaint substantiated.

12. The Ombudsman recommended that AA:

(1) expedite its review and revision of its CCTV policy and procedures in handling complaints or reports of incidents of irregularities at the airport such that they would enable the viewing and retention of relevant footage of CCTV recordings where warranted;

(2) provide appropriate training and/or advice to its management on their mindset as well as to frontline staff on proper customer service in order not to compromise the honesty and transparency of AA.





Architectural Services Department ("Arch SD")

Case No. OMB 2014/2596 – Repair of public toilet

Allegation: delay in repairing the flush system of a public toilet – unsubstantiated

Details of Complaint

For almost two months in May and June 2014, the flush system of a public toilet at a public transport interchange was out of order, causing inconvenience to the public. The complainant was dissatisfied that Arch SD had delayed repairing the toilet.

Our Findings

2. The public toilet was designed and constructed by the Kowloon-Canton Railway Corporation. The Food and Environmental Hygiene Department ("FEHD") was responsible for the management of the toilet while its maintenance and repair was the responsibility of several works departments. When repairing the flush system of the toilet, Arch SD needed coordination with the other departments.

3. In May 2014, having been notified by FEHD of the breakdown of the flush system, Arch SD staff inspected the toilet and found that some valves were damaged, and the pipes of the water tank and some parts of the plumbing installation were either clogged by seashells or damaged.

4. As to why the supply of flush water did not resume until 26 June, Arch SD explained that the design of the flush system was rather complicated and the materials used were uncommon. The flush system, which was not equipped with filters, was prone to damage. The damaged parts, which were not standard items used by the Department, were not readily available on the market and the Department had taken time to obtain the spare parts from suppliers. Furthermore, the Department had to conduct multiple checks to find out what exactly had gone wrong before coming to a repair solution with the departments concerned.

5. To complete the repairs, Arch SD replaced the fragile valves with more durable ones. It undertook to work out with the departments concerned a long-term solution to the problem.

Our Comments and Recommendation

6. We found that Arch SD had in fact actively arranged the repairs to the flush system. The system resumed service only towards the end of June, because of its complicated design and the need to involve various departments.

7. The Ombudsman, therefore, considered the complaint unsubstantiated.

8. Nevertheless, the case revealed an inadequacy on the part of Arch SD. Though not responsible for the design and construction of the toilet, the Department had approved the design and taken over the toilet on completion. It should have noticed that the flush system was rather complicated and uncommon in

its design as well as not being equipped with any filters, such that its plumbing installation could easily be clogged or damaged. Had Arch SD at the outset devised an appropriate maintenance strategy, it might have taken less time on the repairs in this case.

9. The Ombudsman urged Arch SD to take reference from the incident and promptly formulate a proper maintenance strategy for uncommon flush systems to prevent recurrence of similar problems.

A case of lack of proper planning



Buildings Department ("BD") – Joint Office for Investigation of Water Seepage Complaints ("JO")

Case No. OMB 2014/3615B – Water seepage complaint

Allegation: delay in handling seepage complaint – substantiated

Details of Complaint

The complainant had lodged a seepage complaint with JO, which is made up of staff from the Food and Environmental Hygiene Department and BD. After more than two years, the seepage problem remained unresolved. He complained against JO for delay in handling his case.

Response from JO

2. JO first received the seepage complaint in June 2012. In its preliminary investigation, JO was unable to identify the source of seepage. JO then appointed a consultant company for follow-up. As the moisture content ("MC") readings were below 35% at the

seepage location, which showed that the seepage had stopped, JO replied to the complainant in February 2013 that it would suspend action on his case.

3. In the ensuing month, the complainant complained to JO again. JO asked the consultant company to follow up. As the company could not gain access to the flat above for inspection, it requested JO in September to issue to the owner a "Notice of Intention to Apply for a Warrant of Entry" ("Notice"). JO replied that the company should take the latest MC readings at the seepage location before a Notice could be issued. However, the company ignored JO's request despite JO's repeated reminders. Meanwhile, due to manpower shortage, JO did not take the MC readings by itself. As a result, the issue of a Notice was on hold.

4. The consultant company eventually provided the latest MC readings to JO in August 2014. However, as the owner of the flat above had by then agreed to JO's entry for investigation, a Notice was no longer necessary.

Our Comments

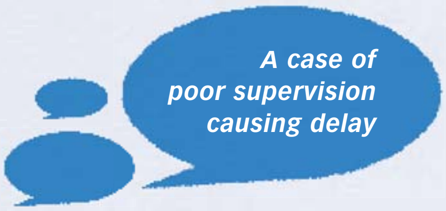
5. JO had allowed the consultant company to delay taking the MC readings, which is in fact a simple task. Neither had it taken alternative action such as deploying its own staff to do the measurement. As a result, the investigation was seriously hampered. Even with shortage of manpower, JO should have deployed its own staff to do the measurement with priority. It was unreasonable of JO to have laid back and dillydallied.

6. Furthermore, after receiving the second complaint, JO did not inform the complainant of the progress of his case until after more than one year, which also constituted a serious delay.

Conclusion and Recommendation

7. In view of the above, The Ombudsman considered this complaint substantiated.

8. The Ombudsman urged BD(JO) to remind its staff/consultant companies to follow established procedures in handling complaints and notify complainants of the progress and findings of investigations in a timely manner.





Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2014/0644 – Illegal disposal of refuse

Allegation: failing to take effective measures to resolve the problem of illegal refuse disposal – substantiated

Details of Complaint

People had long been using an open space right in front of a FEHD district cleansing office ("the Site") for illegal disposal of refuse, causing a serious environmental nuisance. The complainant had lodged a complaint with FEHD, but the problem persisted. The complainant was dissatisfied that the Department had failed to take effective measures to resolve the problem.

FEHD's Response

2. FEHD admitted that the Site was a black spot of illegal refuse disposal. The persistence of the problem, as explained by the Department, was due to the fact that staff of the cleansing office, whose working hours were from 6:45 am to 11:30 pm, could not inspect or take enforcement action at the Site in the small hours every day. To tackle the problem, FEHD had taken many measures, including: endeavouring to take surprise enforcement action in the early hours; posting layout plans at prominent locations indicating where the refuse collection points in the vicinity were situated; strengthening education on environmental hygiene and reminding shop operators and residents in the area of the prohibition of illegal refuse disposal; arranging contractors to clear the refuse and cleanse the Site; and discussing with the departments concerned on the feasibility of fencing off the Site.

3. FEHD also planned to extend the opening hours of a refuse collection point in the vicinity to encourage the public to dispose of their refuse lawfully.

Our Comments

4. It was ironical that the Site, right in front of an FEHD office, had been used continually for illegal refuse disposal.

5. FEHD records showed that about three to four inspections at the Site were conducted per week but most of them were conducted either after 7:00 am or in the evening before midnight, while the illegal refuse disposal activities in fact usually took place after midnight and in the early hours. As the enforcement actions were not taken at the right time, they were naturally ineffective.

Conclusion and Recommendations

6. In view of the above, The Ombudsman considered the complaint substantiated.

7. The Ombudsman urged FEHD to:

(1) fence off the Site as soon as possible;

(2) closely monitor the situation in the small hours and strengthen prosecution against offenders; and

(3) consider extending the opening hours of the other refuse collection points in the vicinity if warranted.

A case of ineffective enforcement



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2014/1678 – Columbarium niches in Islands District

Allegation: unfairly refusing to make available the remaining niches at Cheung Chau Columbarium for residents of other districts, resulting in a waste of resources – unsubstantiated

Details of Complaint

In early 2014, FEHD made available 1,000 new niches at Cheung Chau Columbarium exclusively for indigenous villagers of Islands District or persons who had resided in Cheung Chau continuously for not less than ten years ("the eligibility criteria"). After the first round of sale by ballot, only 167 niches were taken up. The remaining niches were then offered for sale on a first-come, first-served basis starting from April 2014, but the same eligibility criteria applied.

2. To the complainant, the result of the first round of sale was an indication that Islands District residents' need for columbarium niches had been fully met. It was unfair and wasteful on the part of FEHD to deny residents of other districts use of the remaining niches.

FEHD's Explanation

3. FEHD provided two major justifications for maintaining the eligibility criteria:

(1) The eligibility criteria followed the policy made by the Regional Council in 1988 and were for the convenience of Islands District residents.

(2) The remaining niches were for catering for Islands District residents' future need. FEHD expected that those niches would be sold out quickly if they were made available for residents of other districts. It would then be difficult to find suitable sites for new niches to serve Island District residents.

Our Comments

4. As the eligibility criteria adopted by FEHD were supported by an established policy, The Ombudsman, from an administrative point of view, considered the complaint unsubstantiated.

5. Nevertheless, the Regional Council had been dissolved years ago while the population structure and way of life in Islands District had since undergone significant changes. It was a moot point whether that policy established long ago was in keeping with the times.

Recommendation

6. As the supply of columbarium niches would continue to fall short of demand in the foreseeable future, the Administration should allocate niches more flexibly so as to balance the demand and supply of niches among districts. Accordingly, The Ombudsman recommended that FEHD, together with the other departments concerned, review in due course the policy governing columbarium niches in Islands District.

A case pointing to the need to keep abreast of the times



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2014/1987A – Street obstruction by shop

Allegation: failing to take effective enforcement actions against a fruit shop which occupied part of the pavement with its goods for an extended period – partially substantiated

Details of Complaint

In September 2013, the complainant lodged a complaint with FEHD, alleging that a fruit shop had been occupying the pavement in front for an extended period for display and sale of its goods, causing obstruction. The situation, however, did not improve.

Relevant Legislation and Enforcement Strategy

2. To tackle problems of this nature, FEHD can invoke the Summary Offences Ordinance to prosecute the shop for "street obstruction", or the Public Health and Municipal Services Ordinance for prosecution of "illegal hawking" and seize the goods. The Department's usual strategy is "warning before

enforcement". In case of recalcitrant offender, FEHD may institute prosecution right away.

FEHD's Response

3. FEHD indicated that it had been monitoring the problem caused by the fruit shop. Between May 2013 and early July 2014, FEHD issued more than 500 warnings, instituted 72 prosecutions for "street obstruction", and seized the goods as well on 6 occasions when it prosecuted the fruit shop for "illegal hawking".

4. After we started our investigation into the case, FEHD stepped up its enforcement against the fruit shop and stopped giving it forewarnings. Between early July and late October 2014, FEHD, without any prior warning, prosecuted the shop 19 times for "street obstruction" and 8 times for "illegal hawking".

Our Comments

5. During our site visits, we found that the fruit shop had placed huge quantities of goods on the pavement in front for sale. The shop had in effect extended its business area by more than three metres. That was a serious breach of the law.

6. FEHD officers had patrolled the shop almost every day since May 2013, and had found its goods obstructing the street on all occasions, resulting in warnings issued to the shop operator. However, the shop often relapsed and put its goods back onto the pavement. Obviously, FEHD's strategy of "warning before enforcement" was totally ineffective.

7. Prior to our intervention, FEHD mainly prosecuted the fruit shop for "street obstruction", which carried a lighter penalty and hence weaker deterrent effects. No wonder the shop did not fear the Department's enforcement actions. Surely, FEHD could have, through close surveillance, collected sufficient evidence of transaction activities to prosecute the fruit shop for "illegal hawking" and seized its goods to achieve stronger deterrent effects. There was indeed room for improvement in FEHD's enforcement.

Conclusion and Recommendation

8. In the light of the above, The Ombudsman considered the complaint partially substantiated.

9. The Ombudsman urged FEHD to continue to keep close watch over the fruit shop, and be stricter and more decisive in its enforcement actions, including more prosecution of "illegal hawking", in order to uphold the law.





Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2014/2085 – Allocation of columbarium niches

Allegation: improper arrangements for allocation of columbarium niches – substantiated

Details of Complaint

In 2012, FEHD completed the construction of 45,250 new niches at the Wo Hop Shek and Diamond Hill columbaria, and started allocating those niches in phases over three years by computer ballot.

2. The complainant had applied to FEHD for a niche for his deceased relative in September 2012, but was unsuccessful in the ballots of the first two years. As FEHD did not have a waitlisting mechanism for the niches not taken up by successful applicants, he had to participate in the ballot for the third time in 2014. The complainant considered FEHD's allocation arrangements grossly unfair and improper.

Our Findings

Phased Allocation over Three Years Left Many Niches Vacant for Too Long

3. FEHD explained that the phased allocation arrangement over three years was for ensuring a continuous and steady supply of niches to cater for people dying each year.

4. We, however, noted that as the applicants whose relatives had passed away in the year might not be among the lucky ones who succeeded in the ballot of that year, FEHD in fact could not possibly "cater for people dying each year" with its arrangement of phased allocation of niches by ballot.

5. Even more unreasonable was that FEHD allocated the niches in phases over three years and hence left many of the niches vacant for too long. "A continuous and steady supply of niches over the years" as claimed by FEHD was merely an illusion created by its phased allocation. In fact, the niches had long been available, only that FEHD did not promptly allocate them all. FEHD was not only turning a blind eye to the anxiety of the waiting public, but in essence was also acting against the Government's policy objective of increasing the supply of niches as soon as practicable.

People Unsuccessful in Ballots Might Have to Wait Endlessly

6. FEHD adopted the approach of allocating niches by computer ballot, as suggested by the Independent Commission Against Corruption, in order to prevent corruption and thus to ensure fairness.

7. We agreed that all applicants stand an equal chance of securing a niche under the allocation-by-ballot approach, and so it is fair in that sense. Nevertheless, random allocation of niches by ballot also means that some applicants may be unsuccessful in the ballot time and again and have to wait endlessly for a niche. Given the current shortage of supply, it is conceivable how distressed applicants would feel if their relatives have passed away long ago and they

still cannot secure a niche. They may resort to private columbaria, but then the legality of such columbaria and associated risks are causes for concern.

8. In our view, provision of public niches is a basic Government service for the community. Similar to public housing or medical care, it will be more reasonable to adopt a registration system to allocate niches on a first-come, first-served basis. Surely, any possible corruption could be prevented through careful formulation of procedures.

No Waitlisting Mechanism and Leftover Niches Not Allocated Quickly

9. In the first two years of this allocation exercise, a total of 5,607 successful applicants did not take up a niche. In the absence of a waitlisting mechanism, the leftover niches were left vacant and carried forward to the third year for re-allocation. FEHD argued that a waitlisting mechanism, if set up, would have prolonged the entire allocation process.

10. We considered that while a waitlisting mechanism might have prolonged the allocation process in the first two years, it would have shortened the allocation procedure and hence the time required in the third year. FEHD's concern about processing time can be alleviated by putting a cap on the waiting list. The point is that a waitlisting mechanism will enable applicants' demand for niches to be met sooner, thus minimising the number of vacant niches in each year and avoiding wastage of resources. Therefore, we found it more desirable to have a waitlisting mechanism. FEHD should not have put its own administrative convenience above public interests.

Conclusion and Recommendations

11. In the light of the above, The Ombudsman considered the complaint substantiated. She urged FEHD to quickly review its allocation arrangements in the following directions so as to provide niches to the public in an efficient and orderly manner:

(1) to consider allocating niches on a first-come, first-served basis;

(2) even if the existing approach of allocation by ballot is to remain, to enhance the arrangements, such as giving higher priorities to applicants who have been repeatedly unsuccessful in the ballot, and establishing a waitlisting mechanism; and

(3) to explore ways of further streamlining the allocation procedures.

A case of failure to address public demand



Food and Environmental Hygiene Department ("FEHD")

Case Nos. OMB 2014/3905 & OMB 2014/3924 – Street obstruction by photography stalls

Allegation: ineffective enforcement action against street obstruction by photography stalls – partially substantiated

Details of Complaint

Two public complaints had been lodged with FEHD about the problem of serious obstruction frequently caused to pedestrians by photography stalls along a certain street. FEHD, however, did not regard photographers as hawkers and did not institute any prosecution against the stall operators for "unlicensed hawking" or "street obstruction". The complainants complained to this Office that FEHD had failed to take effective enforcement action, thus allowing the obstruction problem to continue.

Relevant Legislation and Enforcement Strategy

2. The definition of "hawker" (i.e. people who engage in on-street selling activities without a licence issued under the relevant legislation) in the Interpretation section under the Public Health and Municipal Services Ordinance ("the Ordinance") does not include photographers. Therefore, FEHD would not regard the activities of those photography stalls as "unlicensed hawking".

3. According to FEHD, the problem of street obstruction by photography stalls involves the jurisdictions of a number of Government departments while FEHD's primary duties are to maintain environmental hygiene and to control hawkers in the streets. Hence, normally, FEHD would just verbally advise the operators to remove their photography stalls and not to obstruct pedestrians. Nevertheless, FEHD would also attend inter-departmental meetings called by the local district offices under the Home Affairs Department to discuss problems of street obstruction, and conduct joint operations with the Hong Kong Police Force to drive away the stalls.

Response from FEHD

4. As noted by FEHD, there were usually one to three photography stalls at the subject location after 9:00 pm on weekdays (i.e. outside the opening hours of the pedestrian precinct). During the opening hours of the pedestrian precinct, there were as many as eight stalls and they might be larger in size.

5. Based on the legal advice obtained by FEHD in 2003 and 2013, photography service in the streets, whether or not monetary transactions are involved, cannot be regarded as "hawking" activity. FEHD, therefore, could not prosecute the operators for "unlicensed hawking". At the request of this Office, FEHD sought legal advice again in 2014 on the operation mode of those photography stalls. The advice was again that photography activity, with or

without trading of photographs, does not fall within the definition of "hawker". FEHD added that as the number of complaints about photography stalls was decreasing, there was inadequate justification to amend the definition of "hawker" to include "photographer" in the scope of regulation under the Ordinance.

6. FEHD confirmed that between December 2013 and February 2015, the Department had only instituted one prosecution for "street obstruction" against a photographer who had repeatedly ignored its advice.

Our Comments

7. On the problem of street obstruction by photography stalls at the subject location, FEHD had verbally advised the stall operators not to cause obstruction. The Department had also conducted joint operations with the Police to drive away the stalls. Yet, the situation showed no improvement. During our site inspection, we found those stalls extending their operations even beyond the opening hours of the pedestrian precinct. Obviously, the enforcement strategy of FEHD had not been effective.

8. Although "photographer" is not included in the definition of "hawker" under the Ordinance, the stalls were in fact providing more than just photography service. There was clearly sale and purchase of photographs, similar in nature to ordinary hawking activities. Even if FEHD could not institute any prosecution against operators of photography stalls for "unlicensed hawking" at the moment, it should have strengthened its enforcement action by invoking the "street obstruction" provisions to initiate prosecutions.

Conclusion and Recommendation

9. In the light of the above, The Ombudsman considered the complaints against FEHD partially substantiated.

10. Despite the decline in the number of complaints about photography stalls as alleged by FEHD, The Ombudsman urged FEHD to continue to closely monitor the situation and consider reviewing the relevant legislation if warranted, so that the loophole in the regulation could be plugged.





Food and Environmental Hygiene Department ("FEHD") and Water Supplies Department ("WSD")

Case Nos. OMB 2014/2929A & B – Seepage complaint

Allegation: FEHD and WSD – shifting responsibility to each other in handling a seepage complaint – substantiated

Details of Complaint

There was serious seepage at the ceiling of the bathroom of the complainant's flat and the complainant suspected that it was caused by a defective fresh water pipe[1] of the flat above. In September 2013, he reported the case to WSD. WSD conducted an investigation and referred the case to the Joint Office for Investigation of Water Seepage Complaints ("JO"), which was made up of staff from FEHD and the Buildings Department, for follow-up action. However, in the ensuing year, WSD and JO just kept shifting responsibility to each other and referring the case back and forth between themselves. As a result, the seepage problem persisted.

1 The pipe in question was installed at the bathroom ceiling of the complainant's flat. It was part of the fresh water supply system of the flat above.

The Event

2. JO staff conducted two inspections at the complainant's flat in October and December 2013. During the second inspection, they observed water dripping from a defective and exposed section of the pipe in question. JO, therefore, issued a memorandum ("Memo A"), with a floor plan and some photographs, to WSD several days later, requesting the latter to follow up the case. WSD later claimed that it had not received it. In mid-March 2014, JO staff conducted another inspection and still found the dripping. It re-issued Memo A to WSD twice afterwards. Nonetheless, WSD just reiterated every time in its reply memorandum that JO should provide a detailed investigation report and the result of a reversible pressure test ("RPT") for it to consider whether to take up the case.

3. In May and June 2014, JO staff tried repeatedly to contact the owner of the flat above in an attempt to enter the flat to conduct an RPT, but to no avail. In late June, they inspected the complainant's flat again and confirmed that the pipe was still dripping. JO, therefore, wrote to apprise WSD of the situation.

4. WSD staff carried out an inspection in early July, and confirmed that the pipe was defective. It then issued a notice to the owner of the flat above, demanding that repairs to the pipe be carried out by the prescribed deadline. In early September, WSD confirmed that the repairs had been completed and the seepage had stopped.

Our Comments

Regarding WSD

5. We considered that WSD's inaction on the case did not have good grounds. Its attitude amounted to evasion of responsibility. Indeed, JO's Memo A had stated clearly that water was dripping from the defective and exposed section of the pipe. A floor plan and some photographs were also attached as evidence. According to the relevant guidelines, when the exposed section of a pipe is visibly dripping,

JO need not perform an RPT and can simply refer the case to WSD for follow-up. In repeatedly asking JO to perform an RPT first, WSD was close to being unreasonable.

Regarding JO

6. And JO did not assert its stance when faced with WSD's unreasonable demand. It did not bother to point out to WSD that an RPT was unnecessary. Instead, it issued Memo A to WSD again and again. Besides, JO staff failed to report the issue promptly to their supervisor for resolution at a higher level. In the end, JO even went with WSD's demand and tried to arrange an RPT. The problem dragged on and on.

Conclusion and Recommendations

7. There were inadequacies in both WSD's and JO's handling of the seepage case. They failed to cooperate with each other fully and took no concrete action until seven months after the pipe was first found defective. This Office, therefore, considered the complaint against WSD and JO substantiated.

8. The Ombudsman recommended that WSD remind its staff to follow strictly the relevant guidelines and actively cooperate with JO in handling complaints referred by JO concerning leakage of water supply pipes. In case of doubt or disagreement in the process of case referral, WSD and JO should discuss promptly for a solution, or take the case to a higher level for a decision. Moreover, WSD and JO should apologise to the complainant.

9. Both WSD and JO accepted the above recommendations.

A case of shirking of responsibility and failure to follow guidelines



Hospital Authority ("HA")

Case No. OMB 2013/4349 – Tender exercise for laboratory equipment

Allegations: (1) faulty procedures and unreasonable decisions in favour of a particular bidder in two tender exercises for procurement of laboratory equipment – unsubstantiated; and (2) unreasonably cancelling the first tender exercise without addressing the complainant's dissatisfaction – partially substantiated

Details of Complaint

The complainant, a medical equipment supplier, was aggrieved by the way HA conducted an invitation to quote and its subsequent bulk tender for a certain laboratory equipment. Essentially, the complainant alleged that:

(1) HA's tender procedures were faulty as its officers were allowed to manipulate the outcome by repeatedly asking potential bidders for comments on the tender documents and amending the specifications in the two exercises to unfairly favour a particular bidder; and

(2) when the complainant wrote to HA to air its dissatisfaction, HA unreasonably cancelled the quotation exercise and did not address its complaint.

Course of Events

Invitation to Quote

2. In March 2013, upon the request of a public hospital ("Hospital A"), HA's Cluster Procurement and Materials Management Centre ("CPMM") invited five potential suppliers to quote for the supply and installation of one set of the subject laboratory equipment. Three valid offers, including one from the complainant, were received by the closing date. CPMM then conducted several rounds of clarifications with the complainant on the requirements that it failed to meet. In late May, the complainant issued two letters to HA, alleging irregularities on the part of CPMM in the quotation process, particularly the inclusion of some technical requirements which the complainant claimed were in favour of another bidder.

3. In response to the complaint, HA convened an *ad hoc* meeting, in the presence of an external expert, on 28 May to review the offers received. Legal advice was also sought after the meeting. Consequently, HA decided to cancel the quotation exercise because none of the offers fully conformed with the mandatory specifications. The complainant was notified of its decision by letter.

Bulk Tender

4. Meanwhile, HA Head Office initiated a bulk tender in early 2013 for ten sets of the subject laboratory equipment to be installed in a number of hospitals. A Tender Assessment Panel ("TAP") was formed. After a round of market enquiry to invite comments from several potential bidders, including the complainant, TAP developed a set of tender specifications in May 2013.

5. In view of the complaint lodged by the complainant in late May (paragraph 2), this bulk tender was put on hold. Subsequently, one additional set of equipment for Hospital A was included in the bulk tender after the cancellation of the quotation exercise. TAP then reviewed the tender specifications, in particular those technical requirements in relation to the complaint. Its key members also visited a medical centre to collect user feedback on the equipment delivered earlier by the complainant.

6. A second round of market enquiry was conducted and the tender specifications were further modified before an open tender invitation was issued in August. The complainant made no offer in response to the bulk tender. In October 2013, the complainant lodged a complaint to HA and this Office in parallel regarding the two procurement exercises.

Response from HA

7. According to its Procurement Manual, HA may conduct market enquiry with potential suppliers to collect up-to-date information in the process of drafting tender specifications. The purpose is to ensure that its requirements are clearly presented and not too restrictive for sufficient competition in the tender. HA considered the mandatory and desirable requirements in the final version of tender specifications justified to meet HA's service and operational needs. Besides, market competition was maintained as the products of at least two potential suppliers (including the complainant) could meet all the mandatory specifications. HA added that the complainant's dissatisfaction was duly noted by the assessment panels in the two procurement exercises.

Our Comments

8. HA's technical requirements for equipment to be procured involved professional judgement. From the administrative point of view, we considered HA to have followed the proper procedures in its Procurement Manual in the collection of market information and change of tender specifications. In particular, the whole decision-making process involved many parties, including various sections within HA, and the specifications of the two procurement exercises were drawn up by Hospital A and TAP respectively. In such circumstances, it was unlikely that any party could

seek to make any unreasonable or unjust changes to the specifications in favour of a particular bidder.

9. We found no evidence that HA officers had manipulated the outcome in the two procurement exercises. Allegation (1) was, therefore, unsubstantiated.

10. We also noted that the invitation to quote exercise was cancelled with valid reasons in line with the Procurement Manual and there was no change to the specifications in the course of this exercise. However, in its letter informing the complainant of the cancellation, HA did state that its technical requirements had changed. HA explained that since none of the offers received in the cancelled exercise conformed with all the mandatory requirements, it was necessary to change them in the subsequent bulk tender exercise. We considered the wording in that letter inaccurate and misleading, resulting in the misunderstanding that the specifications had been changed in the first exercise.

11. Moreover, it was highly undesirable and improper that HA had never given a clear and substantive reply to the complainant. Even though it had duly considered the complaints and found them unjustified, HA should still give specific responses to the complaint points. We considered, therefore, allegation (2) partially substantiated.

Conclusion and Recommendation

12. Overall, The Ombudsman considered the complaint partially substantiated.

13. The Ombudsman recommended that HA review its complaint handling procedures to ensure proper replies to all complaints arisen from its quotation and tender exercises.

A case of lack of proper reply to complainant



Housing Department ("HD")

Case No. OMB 2013/3259 – Surveillance footage

Allegation: failing to properly attend to the complainant's request for retention and release of lift surveillance footage – substantiated

Details of Complaint

The complainant reported that she had sustained an injury inside the lift of a public housing estate and requested to view the relevant footage captured by the closed circuit television ("CCTV") system. HD and the property management agent ("PMA") rejected her request on various grounds before finally admitting that the footage had been deleted long ago. The complainant was dissatisfied with the way HD handled her case and suspected that it had deliberately destroyed the evidence. She, therefore, lodged a complaint with this Office.

Course of Events

2. HD explained that video images constituted personal data and hence excessive retention should be avoided. Regarding the CCTV system in this incident, the PMA might decide to keep any crucial footage by manual operation in circumstances where it is deemed necessary, otherwise all video records would be erased automatically after 14 days.

3. On 25 December 2011, the complainant called the HD hotline to report a personal injury in the said lift and requested an investigation. On 5 January 2012, three parties concerned, i.e. HD, the PMA and the contractor for lift maintenance and repair ("the contractor"), jointly reviewed the surveillance video covering the alleged incident. They concluded that no one had suffered any injury and there was no need to keep the footage. Three days later, the video records were erased by default.

4. Subsequently, the complainant sought compensation from HD and the contractor. The complainant wanted to view the footage, but HD stated that the claims had been handled and there was no need to do so. The loss adjuster acting on behalf of the contractor's insurance company asked for a copy of the footage and was refused by the PMA on security grounds. In response to the complainant's enquiry on this, HD explained that the loss adjuster did not cite any exemption under the Personal Data (Privacy) Ordinance and the PMA stated that it was under no obligation to provide the loss adjuster with the footage.

5. In August 2013, the complainant cited the Personal Data (Privacy) Ordinance and made a formal request for access to the video footage covering the time of the incident and a copy of the footage. Eventually, HD admitted that the footage had not been retained.

Response from HD

6. HD conceded that the footage should have been kept. Had the PMA staff acted with a sense of urgency and sensitivity and retained the footage as real evidence, the subsequent dispute could have been avoided. Furthermore, HD considered it improper for the PMA not to disclose to the complainant earlier that the footage had already been deleted, as it caused her to believe that the footage was still available and thus suspect that HD had deliberately destroyed the evidence.

7. HD apologised to the complainant and instructed the PMA to enhance its communication with public housing tenants.

Our Comments

8. Prompted by the personal injury report filed by the complainant, HD reviewed the relevant footage together with the PMA and the contractor and concluded that no one had suffered any injury. Clearly, their observation did not tally with the complainant's account of the incident. Since there were two different versions as to what had happened, it was indeed unwise of HD to allow the objective evidence to be erased by the system automatically.

9. We accepted that a number of factors would need to be taken into account when deciding whether to keep the video footage. The matter would also need to be handled with extra caution as personal data was involved. While the PMA's judgement was important, over-reliance on the judgement of individual staff could easily lead to inconsistent or even unsound decisions, as in the present case.

10. Moreover, while there was no impropriety in stating their principles for refusal to release the footage, HD and the PMA should also have provided the complainant with specific information about her case. We considered it undesirable in just citing various principles without mentioning that the footage no longer existed.

Conclusion and Recommendation

11. HD's existing guidelines on the use of CCTV system were inadequate and there were deficiencies in handling this case. In the light of the above, The Ombudsman considered the complaint substantiated.

12. The Ombudsman recommended that HD draw up more comprehensive guidelines, for reference and compliance by staff, on retention and deletion of CCTV records captured at public housing estates, with elaboration on common situations where video footage must be retained.





Housing Department ("HD")

Case No. OMB 2013/3845 – Public housing tenancy

Allegation: unreasonably deleting the complainant's status as one of the tenants of a public rental housing ("PRH") unit – unsubstantiated

Details of Complaint

The complainant had lived with his family members in a PRH unit of which the principal tenant was his mother ("Ms A"). In December 2010, Ms A applied to HD for deletion of the complainant's status as one of the tenants on the grounds that he had moved out. The complainant was dissatisfied that HD had deleted his tenant status without verification of his situation or his consent.

Our Findings

Procedures for Deleting Tenant Status

2. Under the tenancy agreement, the principal tenant and his/her household members listed in the agreement must continuously reside in the PRH unit.

3. If a household member has been absent for a prolonged period without any special reason and HD cannot locate the person, HD will write to him/her requiring a meeting with its staff within one month. If there is no response, HD will conduct a visit to ascertain his/her cessation of residence in the PRH unit and then request the principal tenant to complete the deletion formalities. Normally, reinstatement of tenant status is not allowed.

The Events

4. In March 2009, HD routinely requested PRH tenants to declare their household income. Ms A told HD that the complainant had gone abroad to work and so could not sign on the Income Declaration Form.

5. In December 2010, Ms A applied to HD for deletion of the complainant's tenant status. She alleged that he had "moved out" and his current address was unknown. HD sent a letter to Ms A's address to notify the complainant that he had breached the terms of the tenancy agreement and that he should meet its staff within one month or his tenant status would be deleted. However, HD did not hear from the complainant. In late January 2011, HD conducted a visit to ascertain the complainant's cessation of residence in the PRH unit before deleting his tenant status.

Our Comments

6. The above showed that more than one and a half years had lapsed between Ms A's notification to HD about the complainant's departure for work abroad and HD's subsequent receipt of her application for deletion of the complainant's tenant status. It was, therefore, not unreasonable of HD to consider Ms A's application on the basis of her statement. HD had followed established procedures in processing the application and no impropriety was involved.

Conclusion and Recommendations

7. Accordingly, The Ombudsman considered this complaint unsubstantiated.

8. Nevertheless, deletion of tenant status seriously affects the rights and interests of PRH residents. The Ombudsman considered that as the complainant had raised a query, HD should have given him an opportunity to state his case and then considered whether there was any special reason that warranted its exercise of discretion to reinstate his tenant status. When dealing with similar cases in future, HD should also allow those persons having their tenant status deleted a chance to explain.



Housing Department ("HD")

Case No. OMB 2013/4067 – Special transfer of tenant and purchase of public housing flat

Allegation: (1) unreasonably refusing to grant public housing tenant status to a tenant's brother to allow him to stay in the flat and take care of the tenant – unsubstantiated; (2) failing to take into account the living space for the tenant's minder in re-allocation of flat – unsubstantiated; (3) delay in processing the tenant's application for special transfer – unsubstantiated; (4) delay in carrying out modification works at the newly allocated flat – unsubstantiated; and (5) delay in processing the tenant's application to purchase the flat – unsubstantiated

Details of Complaint

The complainant's sister ("Ms A") was ill, wheelchair-bound and dependent on others in her daily life. Ms A, therefore, applied to HD for its granting of public housing tenant status to her brother and for its permission for a minder (i.e. the complainant) to live together in her flat. She also asked for a special transfer to a flat suitable for wheelchair use in the public housing estate where the complainant was living ("the Estate"), so that the latter could take care of her.

2. Later on, Ms A agreed to transfer to a flat HD allocated ("Flat X"). She then asked HD to carry out modification works at the flat to make it suitable for wheelchair use. Meanwhile, she also applied to purchase that flat under the Tenants Purchase Scheme ("TPS"). Unfortunately, she passed away a few days after the completion of the modification works, but before the completion of the TPS formalities.

3. In relation to Ms A's applications mentioned above, the complainant complained against HD for:

(1) unreasonably refusing to grant public housing tenant status to Ms A's brother;

(2) failing to take into account the living space for the minder when allocating a flat for Ms A's special transfer;

(3) delay in processing Ms A's application for special transfer;

(4) delay in carrying out the modification works at Flat X; and

(5) delay in processing Ms A's application to purchase Flat X.

Allegations (1) and (2)

Response from HD

4. According to the prevailing policy, HD will not grant public housing tenant status to the siblings of a tenant. Singleton tenants who need to be taken care of by relatives because of disability can, by producing a medical certificate, apply for "conditional temporary stay" of a minder in the flat. However, the minder will not be regarded as an approved member of the household, and the living space for the minder will not be taken into account when HD allocates a flat to the tenant.

5. When HD staff learned that Ms A wanted her brother to be granted tenant status, they immediately explained to her the aforementioned policy, wrote to her and met with her and her family members to give further explanation. In the event, Ms A did not apply to HD for conditional temporary stay of a minder in her flat.

Our Comments

6. HD's refusal to grant Ms A's brother public housing tenant status was in accordance with its established policy. No maladministration was involved.

7. Minders are only allowed conditional temporary stay in public housing flats. They do not have tenant status and have not gone through the necessary means test or other vetting procedures. We found it reasonable of HD not to take such persons into account when calculating living space requirement. This is to ensure equitable allocation of public housing resources.

8. The Ombudsman, therefore, considered allegations (1) and (2) unsubstantiated.

Allegations (3) and (4)

Response from HD

9. Under the prevailing policy, HD had to obtain a medical report proving Ms A's "non-temporary" need to use a wheelchair, before the Department could allocate a bigger (two-person) flat to Ms A. Therefore, HD had to wait for the relevant documentary proof from the medical social worker.

10. The District Tenancy Management Office under HD had been closely following up Ms A's case of special transfer. The problem was that more than 80% of the flats in the Estate had already been sold under TPS and rental flats available for allocation, particularly those suitable for wheelchair users, were scarce.

11. After receiving the documentary proof, HD at one point wrongly allocated a flat in another housing estate to Ms A. That happened because its staff, when updating the computer records of that flat, had forgotten to add a remark that all the flats in that building were not suitable, even if modified, for wheelchair users. As a result of that mistake, the computer randomly allocated the flat to Ms A.

12. Later on, HD managed to allocate Flat X in the Estate to Ms A after she had indicated that she would accept a flat not suitable for wheelchair users. The modification works at the flat to cater for Ms A's special needs were completed within 14 working days with no delay. Meanwhile, HD staff kept in touch with the complainant to apprise her of progress.

Our Comments

13. HD had in fact acted on Ms A's application for special transfer in a timely manner. Given the shortage in the Estate of flats suitable for wheelchair users, allocation of one of those flats to Ms A would still have been difficult even if HD staff had not made the mistake in computer input. There was no delay in HD's modification works at Flat X either.

14. In this light, The Ombudsman considered allegations (3) and (4) unsubstantiated. Nevertheless, The Ombudsman urged HD to review its procedures for updating computer records on public housing flats so as to avoid similar mistakes.

Allegation (5)

Response from HD

15. According to the TPS policy, HD will within 60 days notify an applicant whether his/her application for purchase of a flat is accepted. If HD learns of an applicant's death before accepting his/her application, the application will not be accepted.

16. In this incident, HD verified Ms A's TPS application and relevant information within 15 days. There was no delay. HD then learned from the complainant that Ms A had passed away a few days ago. As regards the complainant's request to purchase Flat X in place of Ms A, HD explained that when its staff learned of Ms A's death, processing of her application to purchase the flat was not yet completed, and no paper on accepting the application had been issued. Under the policy, HD could not accept the complainant's request to purchase Flat X in place of her sister.

Our Comments

17. The above information showed that there had been no delay in HD's processing of Ms A's TPS application. That HD had refused to accept the complainant's application to purchase Flat X in place of Ms A was in accordance with its policy.

18. The Ombudsman, therefore, considered allegation (5) unsubstantiated.

Conclusion

19. In sum, the complaint was unsubstantiated.



Housing Department ("HD")

Case No. OMB 2014/1442 – Provision of information

Main allegation: failing to provide up-to-date information on stamp duty to prospective buyers of Tenants Purchase Scheme flats – substantiated

Details of Complaint

The complainants were a married couple, the man being a Hong Kong permanent resident and his wife ("Ms A") a new immigrant. In April 2013, they purchased their public rental housing ("PRH") flat under the Tenants Purchase Scheme ("TPS"), with Ms A registered as the owner.

2. In June, HD sent a letter to the complainants to confirm acceptance of their Letter of Offer ("Confirmation Letter"), containing a note that the buyers should "pay a stamp duty, the tentative amount being $100 and the actual amount payable to be confirmed by the Stamp Office of the Inland Revenue

Department ("IRD")". It was only after the formalities of purchase were completed that the complainants realised they had to pay a total of more than $100,000 in Buyer's Stamp Duty ("BSD") and the increased Ad Valorem Stamp Duty ("AVD") because Ms A was not a Hong Kong permanent resident. They considered HD to have failed in its duty to provide prospective buyers with information on the aforesaid new tax measures.

Our Findings

BSD and AVD

3. Prior to October 2012, IRD charged a standard rate of $100 for AVD for any property sold at or valued below $2 million (including TPS flats). Subsequently, in order to tackle the overheated property market and give priority to the need of Hong Kong permanent residents for home purchase, the Government introduced BSD, targeting at non-permanent residents and amounting to 15% of the property value, and increased AVD (applicable to all residential property transactions) to 1.5% of the property value for any property sold at or valued below $2 million. These new measures were passed by the Legislative Council ("LegCo") in February and July 2014 with retrospective effect.

HD's Explanation

4. HD pointed out to us that as seller under TPS, it had already provided in the Letter of Offer important information, such as pricing, selling prices, special discounts and terms and conditions of sale, to prospective buyers. The Letter of Offer is a general document applicable to PRH tenants who are interested in purchasing their flats. It does not set out specific details for noting by individual buyers. HD had stated in the terms and conditions of sale that buyers are required to pay all the stamp duties relevant to the transaction. In the Confirmation Letter to successful applicants, HD had also explained that buyers are responsible for paying stamp duty. As each case may be different, it is impossible for HD to list the amounts of various types of stamp duty payable by individual buyers.

5. When HD sent the Confirmation Letter to the complainants in June 2013, the aforesaid new measures regarding stamp duty were not yet passed by LegCo. The information about stamp duty in the Confirmation Letter was, therefore, the same as previously stated, i.e. buyers should "pay a stamp duty, the tentative amount being $100 and the actual amount payable to be confirmed by the Stamp Office of IRD".

Our Comments

6. HD was acting as seller on behalf of the Hong Kong Housing Authority in transactions. Since HD was neither the authority collecting stamp duty nor the legal representative of the buyers, we did not consider it HD's duty to remind prospective buyers about the new measures regarding BSD and AVD. Nevertheless, as HD had chosen to notify prospective buyers of their obligation to pay stamp duty, it should have provided them with more comprehensive and accurate information, including the new tax measures that had taken effect since October 2012. Otherwise, prospective buyers might feel misled.

7. In this case, the complainants eventually had to pay some $130,000 in stamp duty, which was far more than the tentative amount of $100 as stated in the Confirmation Letter. No wonder they were very dissatisfied with HD.

Conclusion

8. In the light of the above, The Ombudsman considered the complaint substantiated.

9. HD subsequently made improvement by setting out in its Confirmation Letter the amounts of BSD and AVD to be paid by the buyer as well as providing a leaflet on various types of stamp duty.





Inland Revenue Department ("IRD")

Case No. OMB 2013/4151 – Tax recovery action

Allegation: unreasonably taking tax recovery actions against the complainant – substantiated

Details of Complaint

The complainant was an expatriate native-speaking English teacher employed in Hong Kong. Upon return from her own country after a brief visit, she learned that IRD had requested her school ("the Employer") to withhold her end-of-contract gratuity on the grounds of outstanding tax. Although she then actively followed up the tax matters with IRD, IRD continued to take tax recovery actions against her, including issuing notices to the Employer and her bank.

2. The complainant alleged that IRD had been negligent and unfair in handling her case. Worried that such actions might have affected her employment and damaged her credibility, she requested IRD to issue letters of apology to the relevant parties to clear her name, but to no avail.

Response from IRD

3. IRD explained that a standard Notification Form was received in June 2013 from the Employer notifying IRD of the complainant's impending departure from Hong Kong at the end of her current contract. It was also indicated in the Form that she would return in August. Following established procedures, the assessing officer ("Officer A") treated it as a "leaving Hong Kong case" of an individual ceased to be employed in the territory, and took urgent action to conduct salaries tax assessment with a special tax payment due date.

4. Unfortunately, the tax returns, assessment notices and other letters were all sent to the complainant's old address because she had not informed IRD of her new address. As the complainant did not settle the tax payment before the due date, her case was passed to Division C of the Collection Enforcement Section for tax recovery action. A notice for recovery of tax ("recovery notice") was thus issued to the Employer on 2 August 2013, requiring it to withhold any outstanding money payable to her.

5. Shortly after her return to Hong Kong in mid-August, the complainant telephoned Officer A to raise an objection, stating that she had never received any notice about her tax assessment. She also updated her address by fax and requested IRD to issue the tax return to her again. Officer A then sent an internal memo to Division C, requesting deferral of tax recovery action for eight weeks.

6. However, Officer A failed to indicate the correct addressee on the internal memo and it was sent to Division B instead. The officer of Division B who received the memo did not realise that it was wrongly despatched, nor did she input the deferral instruction into IRD's computer system. Meanwhile, unaware of Officer A's request, Division C proceeded with its actions in September and issued the recovery notices to the Employer again and to the bank at which the complainant had an account.

7. IRD ultimately issued letters of apology to the Employer and the bank, admitting that the two recovery notices were wrongly issued, and also apologised to the complainant.

Our Comments

8. Tax recovery action could have been avoided if the complainant had notified IRD of her new address. Even though her new address had been provided by the Employer in the Notification Form, this did not absolve the complainant's obligation to notify IRD. We, therefore, considered IRD reasonable and proper in issuing the recovery notice to the Employer in August, but the two notices issued in September were a result of mistakes made by IRD staff.

9. In handling cases of taxpayers who are about to leave Hong Kong, the Assessing Group is required to set a tax payment due date well before the departure of the taxpayers or at least four working days before the expiry of the statutory Money Withholding Period. We noticed that in this case, the complainant's file should have been brought up to Officer A for further action seven days after the tax returns were issued, but it was only brought up after one month. By the time the assessment notices were issued, the complainant had already left Hong Kong and the Money Withholding Period applicable to the Employer had expired. Such delays might have defeated the purpose of IRD's guidelines to protect tax revenue.

10. We noted that IRD had reminded the Assessing Group of the need to contact the taxpayer by telephone to ascertain whether it was a genuine leaving Hong Kong case where a date of return to Hong Kong was provided in the Notification Form. IRD had also introduced improvement measures on the transmission of internal memos and reminded its staff to better monitor the file bring-up system.

Conclusion and Recommendation

11. In the light of the above, The Ombudsman considered the complaint substantiated.

12. Though regarded as an isolated incident by IRD, this case suggested possible problems in communication among different sections of IRD. In this connection, The Ombudsman recommended that IRD closely monitor the effectiveness of its internal communication system and keep relevant complaint statistics in this regard to facilitate a systemic review, where appropriate.





Judiciary Administrator ("JA")

Case No. OMB 2013/4726A – Transcripts of court proceedings

Allegation: improper handling of the complainant's application for transcripts and records of court proceedings – partially substantiated

Details of Complaint

The complainant was an inmate who intended to appeal against his conviction and sentence by a magistrates' court ("the original court"). He asked the Registry of the original court, which is under JA, about the procedures for applying for transcripts of court proceedings and the fees for such transcripts. However, he was given several different answers and the transcripts were still unavailable after more than two months. The complainant considered there was deliberate delay by the Registry staff.

Background

2. The court proceedings, judgement and sentencing of the complainant's case took a total of four days. This complaint case mainly involved the transcripts of the second- and third-day hearing and the verdict delivered on the third day.

3. Transcripts of the second-day hearing involved transcripts of the first session, the second session and that of the whole hearing (referred to as "Session 1 Transcript", "Session 2 Transcript' and "Complete Transcript" respectively below). Since the complainant had lodged an appeal, the Appeals Registry of the High Court ("Appeals Registry") would prepare an appeal bundle comprising a number of legal documents to be delivered to him free of charge. The Session 2 Transcript, a major part of the transcript of the third-day hearing ("Third-day Transcript"), as well as the transcript of the verdict ("the Verdict Transcript") were already included in the appeal bundle. The complainant lodged an appeal in early July 2013, but did not receive the appeal bundle by late August.

Sequence of Events

4. In August, the complainant enquired of the Registry about the arrangements for release of the Verdict Transcript. The staff indicated that the transcript would be provided free of charge, but he had to submit an application to the court for processing. The complainant then filed an application for both the Verdict Transcript and the Third-day Transcript, and was told that the latter might cost around $160. The complainant subsequently enquired several times about the delivery arrangements for the transcripts, but the staff repeatedly said that he would have to submit an application before the transcription could be done.

5. On 18 September, the Appeals Registry sent the appeal bundle to the complainant via the Correctional Services Department ("CSD"). However, they did not know when the complainant actually received it.

6. The complainant applied to the Registry in late September for the Complete Transcript and was told that the estimated fee was around $1,500. When the transcript was finally ready in late October, the staff indicated that the actual fee was around $3,100. Meanwhile, the High Court approved the complainant's application for inclusion of the Complete Transcript in a supplementary appeal bundle, to be provided to the complainant for free. It wrote to notify the complainant and the original court of this decision. Again, it was not known when the complainant received the notification letter from CSD.

7. The complainant authorised his elder sister ("Ms A") to collect the various court records and documents for him. Ms A went to collect the Verdict Transcript at the Registry in late September. However, the authorisation letter she presented was not issued via CSD, so she was unable to collect it. Two weeks later, she brought the proper authorisation letter and successfully collected the Verdict Transcript for free, and paid around $86 for the Third-day Transcript. In early November, the complainant noticed that the Session 1 Transcript was missing from the appeal bundle and applied to the Registry for a copy. A few days later, when Ms A went to collect the transcript, the Registry staff told her that the fee was around $2,400, but added that the Complete Transcript would be included in a supplementary appeal bundle to be sent to the complainant free of charge. Ms A, therefore, decided not to collect the transcript for the time being. She later informed the staff by telephone that the supplementary appeal bundle had arrived and she would not collect the Session 1 Transcript.

Response from JA

8. The Verdict Transcript and the Complete Transcript were included in the appeal bundle and the supplementary bundle respectively, to be delivered to the complainant free of charge. JA considered that the Registry staff should have explained the arrangements to the complainant at an early stage, such that he would not need to apply and wait for the duplicate information.

9. The actual fees for the Session 1 Transcript, the Complete Transcript and the Third-day Transcript were around $2,400, $3,100 and $86 respectively. JA explained that the initial estimates were based on the actual time of the hearing, excluding the time of adjournment; whereas the actual fees were calculated according to the number of words in the transcripts. The complainant had enquired about the basis of charging transcript fees but the Registry staff just indicated the actual fees in their replies, without giving the details of calculation. Besides, they had wrongly estimated the time taken for the second-day hearing, resulting in a rather big difference between the estimated and actual fees ($1,500 and $3,100 respectively).

10. Ms A went to the Registry in late September to collect the Verdict Transcript but was refused. CSD staff allegedly told the complainant that it was because the original court had suddenly changed the method of collection. JA clarified that the authorisation letter Ms A presented was not issued via CSD and its veracity could not be verified by the Registry staff. Hence, they refused to let her collect the transcript and asked her to seek proper authorisation in accordance with established procedures. As regards the time taken to process the complainant's applications for transcripts, the Registry staff notified the complainant by post within a month of receipt of his various applications that the transcripts requested were ready. There was no delay.

Our Comments

11. We considered staff of the original court to have properly handled the complainant's various applications without delay. Nevertheless, they could have told him in late September (when he first applied for the Complete Transcript) that the Session 2 Transcript was already included in the appeal bundle; or notified him earlier when the High Court approved the inclusion of the Complete Transcript in the supplementary appeal bundle, which would be provided free of charge. This could have saved the complainant the trouble of making various applications, only to cancel them afterwards. Besides, the complainant had enquired about the arrangements for releasing the Verdict Transcript, but the Registry staff, instead of telling him that it was already in the appeal bundle for free delivery to him, reiterated that he had to submit a written application. That was indeed improper.

12. The question of authorisation was also an issue. JA noted that magistrates' courts had yet to formulate specific guidelines on arrangements in cases where the applicants for legal documents were inmates in a correctional institution and could not collect the documents in person. CSD could not make any supporting arrangements as a result. We also noticed that JA seemed to have no way of knowing when an inmate actually received the letters that the court issued to him/her via CSD.

Conclusion and Recommendations

13. In the light of the above, The Ombudsman considered this complaint partially substantiated.

14. In the wake of this complaint, JA initiated a number of improvement measures. For instance, it would consider adding to the application form for transcripts and its reply letters to the applicant a note stating that all the court records and documents that have been approved for inclusion in the appeal bundle would be provided to an appellant free of charge. Staff of JA were also reminded to state clearly the fees of transcripts and explain clearly the method of calculation. Cross-checking of estimated fees would also be arranged. In addition, JA would discuss with CSD about promulgating clear guidelines on arrangements for inmates to collect transcripts of legal proceedings and documents.

15. The Ombudsman recommended that, in addition to the above measures, staff of JA should state clearly in its replies to applicants whether the court documents they requested were already included in the appeal bundle, and advise them of the proper procedures for collecting those documents. Meanwhile, JA should discuss with CSD about setting up a letter acknowledgement mechanism to ensure that inmates receive letters from the court in a timely manner.





Lands Department ("Lands D")

Case No. OMB 2013/3366 – Removal of rotten trees

Allegation: delay in removing two rotten trees that were in danger of collapse – substantiated

Details of Complaint

The complainant had complained to 1823 about a seriously decaying tree in the New Territories with its trunk and branches in danger of falling on the side of a highway ("Case 1"). A few months later, he complained to 1823 again about another rotten tree, which was also in danger of collapse, alongside the same highway ("Case 2"). 1823 referred both cases to Lands D for follow-up. However, the problem remained unresolved after more than six months. The complainant contacted 1823 time and again to urge prompt action by the Administration, but to no avail.

Tree Management Responsibility

2. Lands D is responsible for the maintenance of trees on unleased or unallocated Government land.

3. On receipt of tree complaints, Lands D will classify and prioritise them as "imminent danger", "urgent" or "general" cases based on the available information. According to Lands D's working guidelines, for "imminent danger" cases and "urgent" cases, site inspection should be conducted on the same day and within three working days respectively. As for "general" cases which do not cause any danger or obstruction, site inspection should be carried out within seven working days. The inspection work is usually outsourced to arboriculture contractors.

The Events

Case 1

4. On 6 February 2013, the local District Lands Office ("DLO") of Lands D received Case 1 from 1823. On 19 March, DLO instructed its contractor to conduct a site inspection before 24 March. The contractor, however, conducted the inspection only in mid-April. As the tree had already collapsed, the contractor suggested removing the tree. DLO issued the works order in mid-September and the tree was eventually removed in early October.

Case 2

5. On 2 May 2013, DLO received Case 2 from 1823. After several reminders from the complainant, DLO instructed its contractor on 30 August to conduct a site inspection. As the inspection on 4 September confirmed that the tree, located on Government land, was dead and rotten, the contractor suggested to DLO that it should be removed. On 17 October, the rotten tree was removed by the contractor in accordance with DLO's works order.

Lands D's Explanation

6. Lands D explained that DLO had received a large number of tree-related complaints and referral cases (over 900) between late July 2012 and April 2013. As a result, it was unable to arrange site inspection by its contractor for the above two cases within the target timeframe (paragraph 3).

7. Lands D added that since the contractor had not suggested according higher priority to the two cases in its tree assessment reports, DLO classified both as "general" cases and handled them in the normal sequence.

8. After a review of the situation, Lands D adopted some measures to improve efficiency, such as assigning contractors to handle tree complaints and deploying temporary staff to assist in the relevant duties; enhancing staff training; and upgrading its information system to facilitate monitoring of case progress.

Our Comments

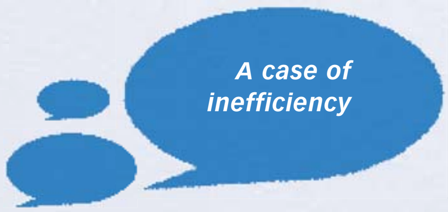
9. Although the contractor had not made any suggestion to DLO about giving higher priority to the two cases, the two trees involved were actually located alongside a major highway in the district. Had the rotten tree trunks fallen on the carriageway, they could have caused obstruction to traffic or even casualties or property damage. We, therefore, considered that DLO should have taken precautionary measures and quickly arranged site inspection to assess the condition of the trees, or even classified the two cases as "urgent".

10. In this incident, DLO only arranged tree inspection by its contractor after one and a half months and four months for Case 1 and Case 2 respectively. There was indeed serious delay. DLO's inefficiency in dealing with tree cases could be seen from the fact that, in Case 1, it had taken five months to instruct its contractor to remove the collapsed tree trunk; and, in Case 2, it had taken one month to issue the works order after receiving the inspection report. The delay on the part of the contractor in carrying out site inspection for Case 1 also showed that DLO had failed to effectively monitor the work progress of its contractor.

Conclusion and Recommendation

11. Overall, the Ombudsman considered the complaint substantiated.

12. The Ombudsman urged Lands D to make extra efforts to completely clear the backlog of tree cases in DLO as soon as possible.





Lands Department ("Lands D")

Case No. OMB 2014/1203 – Publication of land resumption information

Main allegation: failing to include information on a land resumption plan in the land register in a timely manner such that prospective property buyers had no knowledge of the plan – unsubstantiated

Details of Complaint

In 2011, the complainant purchased a ground floor unit with garden ("the Property") on Lot A in the New Territories.

2. In November 2012, Lands D notified the complainant that the Government was going to resume part of the land of the Property ("the Property land") for undertaking certain sewerage works. The complainant later came to realise that the land resumption proposal for the sewerage works had actually been gazetted in 2008.

3. The complainant told this Office that before purchasing the Property, he had already hired a solicitor to conduct a land search. However, the records at the Land Registry ("LR") did not indicate that part of the Property land was to be resumed. He, therefore, had no way to learn of the resumption plan drawn up back in 2008. The complainant alleged that Lands D had failed to provide the necessary information to prospective property buyers.

The Event

4. The sewerage works in question were proposed by the Environmental Protection Department ("EPD"). In May 2008, EPD published in the Government Gazette and two local newspapers the notice about the works and the related land resumption plan. The notice was also posted at prominent positions in the villages affected to inform the public of their right to raise objection to the works. The scope of the resumption plan (which included part of the Property land) was set out clearly in the notice. To comply with the law, EPD further deposited information on the sewerage works, such as the plan, the works area and scheme ("Plan and Scheme"), in LR for public inspection. Since no objection was received, EPD gazetted the works proposal in August 2008.

5. In November 2012, Lands D posted the land resumption notices on the affected private land lots (including Lot A) and gazetted the notice. The notice was further registered in the land register records of each of the affected land lots for public inspection.

Lands D's Response

6. Lands D explained to us that there was no statutory requirement for the Plan and Scheme to be entered into the land register records of each of the properties affected when the proposal was first gazetted for public consultation. Lands D also pointed out that between the gazetting of the works proposal and issuance of the land resumption order, the departments concerned might still revise the Plan and Scheme or even shelve the project, such that land resumption might eventually become unnecessary.

Entering the Plan and Scheme into the land register records of the properties affected before issuance of the land resumption order might, therefore, constitute a premature "encumbrance" on those properties affecting the property interests of the owners.

Our Comments

7. From the above, we noted that the departments concerned had indeed followed the statutory procedures in publicising the information concerning the sewerage works and the land resumption plan, and deposited the Plan and Scheme in LR for public inspection. From an administrative point of view, there was no impropriety regarding Lands D's dissemination of information about the land resumption plan. In fact, those pieces of information were available in LR for public inspection when the complainant purchased the Property.

Conclusion and Recommendation

8. In the light of the above, The Ombudsman considered the complaint unsubstantiated.

9. Notwithstanding this, the case showed that in handling property transactions, some solicitors might just focus on checking the land register records of the property when conducting a land search in LR, without looking for the Plan and Scheme relating to any possible land resumption at the same time. As a result, prospective property buyers might not be able to get such information. The Ombudsman, therefore, recommended that Lands D contact the Law Society of Hong Kong and advise it to consider reminding its members to pay attention in future. Lands D accordingly wrote to the Society.



Leisure and Cultural Services Department ("LCSD") and Environmental Protection Department ("EPD")

Case Nos. OMB 2013/5253A & B – Yu Lan Ghost Festival

Allegations:
LCSD – ineffective control over the organisers of the Yu Lan Ghost Festival and failing to collect scientific data on-site for understanding the effects of pollution caused by the activities on nearby residents' health – substantiated

EPD – same – unsubstantiated

Details of Complaint

The complainant alleged that the Yu Lan Ghost Festival ("the Festival") held at a playground in August and September 2013 produced excessive noise and strong light. The smoke from joss paper burning also seriously affected the housing estate in which he was living. The organisers, however, had not alerted the

estate's management office in advance of details of the activities. The problems had allegedly persisted for several years and he had previously lodged complaints with LCSD, the department for approving such activities. Nevertheless, the situation hardly improved. The complainant considered LCSD to have failed to monitor and regulate the Festival properly, resulting in serious nuisance to residents. Besides, LCSD and EPD had failed to collect scientific data on-site for understanding the effects of various kinds of pollution caused by the activities on the health of nearby residents.

Response from LCSD

2. For the past few years, the Festival at the playground was mainly held by two organisations ("the Organisers"). The Festival of 2013 lasted for nine days and LCSD already contacted the Organisers a few months in advanced to formally remind them to take effective measures to prevent causing nuisance to nearby residents. The Organisers each signed two undertakings and promised to comply with the conditions set by LCSD, which included: submitting to LCSD in advance the time tables for monitoring the noise level and clearing of ashes; following the instructions of LCSD officers to ensure that noise was kept at a reasonably low level; distributing notices to nearby residents alerting them of details of the Festival; appoint a person to monitor the noise level every day during the Festival; and to end all activities, and switch off all the lights and amplifiers by 11 pm.

3. Throughout the activities, the Organisers posted relevant notices at the playground. LCSD officers measured the noise level there every night after 7 pm and did not find it exceeding the prescribed level. Besides, water sprayers were found to be operating properly, with ashes in the furnaces cleared regularly.

4. Nevertheless, seven of the nine *Shengong* opera performances overran (from 20 minutes to more than an hour) and could not end by 11 pm. The lights and amplifiers were not switched off by that time either. Moreover, the Organisers did not appoint any person to measure the noise level or submit to LCSD the Noise Monitoring Form. They also failed to inform the Department of when and where the notices had been posted or report the number of complaints received.

5. Regarding the above non-compliances, LCSD had issued to the Organisers several verbal advice and Notices of Offence, stating clearly that future applications for booking the venue would not be approved if the irregularities were not rectified, and that a record of their failure to submit documents and reports as required had been kept for future reference in processing their applications.

Response from EPD

6. EPD had formulated guidelines for controlling the noise and air pollution that open-air entertainment and worshipping activities might produce. It had also carried out an analysis of the composition of smoke emitted during the burning of paper artefacts. The results indicated that the air quality in the vicinity would not be adversely affected. However, the ash flakes produced during the process of burning might cause nuisance and EPD would conduct assessments according to statutory criteria.

7. For the past three years, while EPD did receive complaints relating to the Festival held at the playground, it did not find any irregularities after on-site assessments. The Department would strengthen communication and cooperation with LCSD and the Home Affairs Department to ensure that event organisers strictly followed its guidelines.

8. To further abate the nuisance caused by the burning of paper artefacts, EPD would ask LCSD to set down clearly in its booking conditions that event organisers must take effective measures to prevent air pollution. For example, they had to designate a specific spot for the furnaces and use up-to-standard air pollution control equipment to reduce smoke and ashes.

Our Comments

LCSD

9. Documentary records showed that over the past three years, the Organisers had repeatedly failed to comply with the requirements of the undertakings. We considered LCSD lax in its monitoring and did not put in place an adequate penalty system.

10. The Organisers had failed to fulfil the requirements to submit to LCSD in advance a distribution list of the notices for residents. Consequently, the Department could not verify whether the notices had really been distributed or ascertain the accuracy of the contents. In fact, LCSD should have checked this at all the buildings in the vicinity before the Festival.

11. On the nights of the *Shengong* opera performance, the Organisers did not appoint a person to measure the noise level but LCSD did not take immediate follow-up actions. It only issued a Notice of Offence three months later. Devoid of substance, such Notices would have little effect.

12. The undertakings stated clearly that in case of non-compliance, LCSD could cancel the right to use the venue at once. In reality, this penalty was hard to administer. Similarly, issuing verbal advice and warnings and keeping records of non-compliance hardly had any effect. LCSD had actually never rejected subsequent applications for booking the venue by the Organisers. In other words, the penalty system existed in name only.

EPD

13. EPD had formulated regulatory guidelines for controlling air and noise pollution. It had also conducted an analysis of the composition of the smoke emitted during the burning of paper artefacts to better understand the air pollution problem. Also, EPD had properly followed up the relevant complaints.

Conclusion and Recommendations

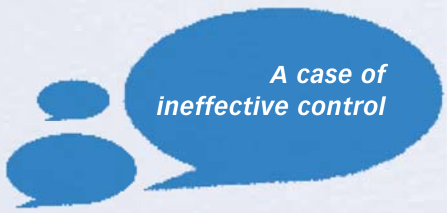
14. In the light of the above, The Ombudsman considered the complaint against LCSD substantiated, and the complaint against EPD unsubstantiated.

15. The Ombudsman recommended that LCSD:

(1) consider adding some new conditions for using venues so as to strengthen the monitoring of compliance by event organisers;

(2) review its penalty system to set down workable and adequate punishments with real deterrent effects; and

(3) remind its staff to conscientiously and closely monitor the compliance with conditions of use by organisers of activities.





Mandatory Provident Fund Schemes Authority ("MPFA")

Case No. OMB 2014/3137 – Contribution surcharge

Main allegation: unreasonably imposing the contribution surcharge for late payment – substantiated

Details of Complaint

The complainant was an information technology company. Having been notified by the complainant's mandatory provident fund ("MPF") trustee ("Trustee A") that the complainant was late in paying the contribution for its employees for March 2014, MPFA imposed on the complainant the contribution surcharge ("the surcharge", which equalled 5% of the amount in default). The complainant claimed that it had in fact sent out the contribution cheque one or two days before the due day. Believing that the problem was with Trustee A instead, the complainant lodged a complaint with MPFA, which, however, considered the complaint unsubstantiated.

2. The complainant was dissatisfied that MPFA had accused it of late contribution and imposed the surcharge, without any evidence to prove that Trustee A had received the complainant's cheque after the due day.

Our Findings

MPFA's Response

3. Employers have a statutory obligation to pay MPF contributions on or before the due day, which normally falls on the 10th day of each month. If payment is made by cheque through post, the date on which the trustee receives the cheque will be regarded as the date of payment.

4. The law does not stipulate the ways and procedures by which trustees should record receipt of employers' contributions, nor require that trustees keep the originals of any records relating to the receipt of contributions by post. However, MPFA had issued a circular letter in January 2014 to all trustees instructing that "they should keep proper records of receipt dates of (employers') payment of contributions and relevant supporting documents relating to such payments."

5. MPFA's investigation had confirmed that Trustee A had established procedures for handling contribution cheques, followed such procedures and entered the dates of receipt of cheques into its computer system. Its computer records showed that it had received the complainant's contribution cheque only on 11 April 2014, i.e. one day after the due day. However, Trustee A had not kept the envelope stamped with the date chop after receiving the cheque.

6. MPFA also found that instead of following Trustee A's instruction to send out its contribution cheque at least five working days before the due day, the complainant had sent out its contribution cheque (for March) only on 8 or 9 April (whereas it should have despatched it on or before 4 April according to Trustee A's instruction).

7. On the balance of probabilities, MPFA believed that Trustee A had received the cheque after the due day. Accordingly, MPFA maintained its decision to impose the surcharge.

Our Comments

8. We consider that documents relating to the date an employer pays the contribution (such as

the envelope stamped with the date chop) can be reliable independent corroborative evidence to substantiate whether or not the employer has been late in mailing out the contribution cheque. Trustee A contended that the complainant had been late in paying the contribution, but it had not followed MPFA's instructions to keep the relevant documents and could only show MPFA its computer records. As the date of receipt of the cheque on those records was only entered into the system manually by Trustee A's staff, it could be wrong.

9. The complainant's failure to follow Trustee A's instruction to despatch the contribution cheque earlier did not necessarily mean that the cheque had reached Trustee A after 10 April. However, the complainant could not produce any independent evidence to prove the cheque's timely arrival either. In other words, both the complainant and Trustee A could not provide concrete evidence regarding the payment date. MPFA, just on the balance of probabilities, chose to believe more in Trustee A and imposed the surcharge on the complainant. That was clearly not well-justified. We considered that MPFA's decision on the case should have been "inconclusive".

10. In the light of the above, The Ombudsman found the complainant's allegation substantiated.

Recommendations

11. The Ombudsman recommended that MPFA:

(1) review its decision of imposing the surcharge on the complainant; and

(2) follow up on Trustee A's failure to properly keep documents relating to receipt dates of employers' payment of contributions, especially those that could prove late payment.

A case of wrong decision



Marine Department ("MD")

Case No. OMB 2013/3794 – Inspection of vessel

Main allegations: (1) negligence in inspecting a vessel – unsubstantiated; and (2) giving preferential treatment to the former owner of the vessel in its application for a Certificate of Survey and providing fraudulent information in the certificate – unsubstantiated

Details of Complaint

In April 2012, the complainant decided to purchase a vessel from a shipping company ("Company A") on condition that an updated Certificate of Survey ("CS") issued by MD would be provided. Company A's representative claimed that he was very familiar with MD's staff and so the Operating Licence of the vessel could be renewed in a "speedy" way. Shortly afterwards, Company A provided an updated CS and the complainant made payment for the purchase.

2. In July 2012, the complainant arranged an inspection and the vessel was found to have a number of defects, which was contradictory to its condition as described in the inspection records and CS of February and April 2012. Moreover, the information on the model of two main engines contained in the CS was different from that stated in the official records of the manufacturer.

3. The complainant alleged that MD's staff had been negligent in conducting the vessel inspections, hence failing to discover the defects and the "wrong" type of engines used on board. The staff had also inappropriately given preferential treatment to Company A by helping it pass the vessel inspections and provided fraudulent information in the updated CS.

Our Findings

The Relevant Code of Practice

4. MD has a specific Code of Practice to ensure acceptable technical and safety standards in the design, construction, maintenance and inspection of local vessels. It sets out which items of the vessels should be surveyed for different classes of vessels and inspections. The inspection items prescribed in the Code are listed in MD's Periodical Inspection Record ("PIR") and Final Inspection Record ("FIR").

5. It is MD's duty to confirm whether the vessel engine is of marine type. Any alteration or modification of a vessel requires written permission from the Director of Marine and replacement of main engines requires the submission of proof of sale and the Type Approval Certificate of the new/used engine.

Booking of Survey/Inspection

6. Booking of surveys should be made at least one working day before the intended day of inspection. MD pledges to arrange local vessel inspection within Hong Kong at one working day's notice. The success rate in 2012/13 shows that nearly all of the vessel owners could arrange an inspection in their first booking.

Response from MD

7. MD explained that vessel inspections only covered those items listed in the Code. The findings and results of the inspections recorded in the relevant PIRs and FIR showed that MD officers had conducted the inspections of the vessel in question properly.

8. Regarding the defects found by the complainant in July 2012, MD believed that since the vessel had been left unattended with the engine room doors not properly closed during a typhoon in June 2012, the machinery might have been flooded by or soaked in water, rendering it damaged and rusty in a short period of time.

9. MD further explained that its officers would check the engine details during inspections as the CS required the entry of engine information. Under the prevailing procedures, MD officers would not initiate to check whether the engine had been replaced if the engine's name plate was lost and the serial number was chiselled on the engine block because missing name plates was very common. According to MD records, the serial numbers of the vessel's two engines remained the same throughout the years.

10. Since the purpose of the periodical and final inspections was to confirm the functional performance of an engine, MD considered it neither practical nor cost effective to extend the scope of the inspection to include verifying whether the engines found on board were the ones originally installed.

Our Comments

11. The relevant PIRs and FIR revealed that MD staff had discovered a number of defects, indicating that the equipment/machinery concerned had been tested and inspected. MD stressed that the main engines were tested and found to be operational in April 2012. Based on those records, we accepted that MD had followed the Code and established procedures in carrying out the inspections.

12. There was a time gap of about three months between the final inspection carried out by MD in April 2012 and the checking of the vessel by the complainant in July 2012. According to MD's professional advice, if the machinery and main engines of the vessel were flooded by or soaked in water, especially when there was a typhoon in June 2012, they could deteriorate and become rusty in a short period of time. In this light, we could not establish that MD officers had been negligent in conducting the inspections.

13. The manufacturer's inspection result in February 2013 could not confirm the model of the two main engines due to lack of proper identification. However, MD's inspection records of the vessel in the year of build showed that the engines were of the same model as those indicated in the CS of April 2012. There was no evidence suggesting that Company A had replaced the main engines or the engines as indicated in the CS were of the "wrong" type. MD noted that the manufacturer provided inconsistent information about the engine model in 1999 and 2013 and was seeking clarification from the manufacturer.

14. In fact, all local vessel owners could book an inspection with MD in a "speedy" way, i.e. one working day in advance. Therefore, Company A had not been given any preferential treatment. Regarding the allegation of fraudulence, we could not find any conclusive evidence that the information stated in the inspection reports was incorrect.

Conclusion and Recommendations

15. Based on the above analysis, The Ombudsman considered the allegations against MD unsubstantiated.

16. Nevertheless, we found some areas requiring improvement. Although MD had established stringent requirements regarding change of engines, it made no effort of verification, thus falling short of effective enforcement. Furthermore, the format of the CS then in use gave an impression that all the items contained in the certificate had been checked and verified by MD staff. In reality, certain items of information were provided by the vessel owner/representative and would not or could not be verified by MD. This could lead to arguments and disputes when the information in the CS were challenged (such as the main engines in this case).

17. The Ombudsman recommended that MD conduct a comprehensive review on the need and appropriateness of its requirements then in force regarding alterations to engines and, if reaffirmed, ensure that such requirements could be effectively enforced. It should also consider whether it is necessary to revise the format of the CS to avoid giving a misleading impression that all the information contained therein have been verified by its staff.





Transport Department ("TD") and Highways Department ("Hy D")

Case Nos. OMB 2013/4705A & B – Temporary traffic arrangements

Allegation:
TD and Hy D – ineffective control over the Mass Transit Railway Corporation Limited and its contractor and failing to set up an effective mechanism to tackle the problem of unauthorised traffic control measures by the contractor – unsubstantiated

Details of Complaint

The complainant, a green minibus operator, alleged that since the commencement of construction works for a certain railway section ("the Works"), the contractor of the Mass Transit Railway Corporation Limited ("MTRC") had time and again wilfully closed traffic lanes and diverted traffic near its work sites during the morning and afternoon peak hours to facilitate loading/unloading of construction materials by its trucks. This caused traffic congestion and resulted in frequent lost trips of his minibuses. He lodged two complaints with TD in September and October 2013. TD replied that the issue had been discussed during the "site liaison working group" ("SLWG") meetings and MTRC had been instructed to step up its monitoring of the contractor. However, the complainant still found repeated violations by the contractor afterwards.

2. The complainant considered that TD and Hy D had failed to properly monitor MTRC and its contractor. The two departments had inappropriately asked MTRC to monitor the contractor instead, disregarding the interest involved between them. Furthermore, SLWG, being just a liaison and notification platform, was not a regulatory mechanism capable of effectively stopping violations by the contractor. The complainant queried if TD and Hy D had set up an effective mechanism to lay down clear rules on temporary road closures and diversions and to prevent non-compliance.

Our Findings

Excavation Permit System

3. Hy D has in place an excavation permit ("XP") system to regulate excavation works on public roads. An applicant should submit its temporary traffic diversion schemes to TD and the Police for approval before carrying out any excavation works. The XP holder must monitor the works process to ensure that the XP requirements are met. In addition, Hy D officers will conduct regular inspections and request the XP holder to rectify any violations found. Prosecution will be instituted in case the violations persist.

The Road Traffic Ordinance

4. The Road Traffic Ordinance ("RTO") regulates illegal traffic activities on all roads (including private roads). Unauthorised closure of roads, diversion of traffic, occupation of traffic lanes and illegal parking are offences subject to enforcement actions by the Police.

SLWG

5. Railway projects are usually of massive scale. Before the works commences, an SLWG would be set up among TD, the Police, the Lands Department and MTRC, with Hy D as the coordinator. The SLWG is responsible for the coordination and approval of temporary traffic management ("TTM", such as traffic diversion or road closure) schemes in relation to the construction works. It also monitors traffic condition after implementation of the schemes. In accordance with the consensus reached by SLWG, Hy D would verify and confirm the TTM drawings, to which MTRC must adhere. Any modifications must be submitted to SLWG for approval anew.

6. If MTRC does not adhere to the approved TTM schemes, SLWG can instruct it to take improvement measures or restrict further approval of TTM schemes or tighten the approval conditions. The Police may also step up enforcement actions.

Response from Hy D

7. The railway section involved excavation works on several public and private roads. Regarding the excavation works carried out by MTRC's contractor on public roads, Hy D staff conducted 21 inspections between September 2013 and March 2014. No violations as alleged by the complainant were found. Besides, the Police did not receive any similar complaints from the public during the aforesaid period. Hy D believed that the violations were sporadic and lasted only for a short period, thus making them very difficult to be discovered during the site inspections.

8. Hy D records showed that MTRC had been taking follow-up actions since receipt of the complaints. For instance, it required the contractor to notify MTRC project staff before trucks would enter or leave the construction site for loading/unloading so as to ensure compliance with the TTM scheme. MTRC also stepped up its monitoring by taking photographs of the traffic around the sites during morning peak hours continually; issued warnings to the contractor with respect to its malpractice and replaced some of the frontline project management staff. In addition, it stepped up inspections during the implementation of traffic diversion as per SLWG's request.

9. Hy D explained that MTRC had an obligation to monitor its contractor to ensure that it adopted proper works procedures and complied with the law. In fact, nothing could have enticed MTRC into conniving at the contractor's violations, lest it should damage its relationship with the local residents and the District Council, not to mention possible delay to works in case the regulatory authority, through SLWG, tightened its approval requirements.

Response from TD

10. TD vets TTM schemes submitted by MTRC and its contractor from the traffic management perspective. TD staff will conduct inspections to check if the contractor has duly implemented the scheme. However, TD is not vested with law enforcement powers, so it can only urge MTRC to make rectifications or refer any violations to the Police or Hy D for follow-up action.

11. Regarding the alleged unauthorised road closure, the contractor explained that the construction sites were too small for trucks to enter, so they had to load/unload construction materials on the carriageway outside the sites. The contractor subsequently submitted another TTM scheme, stating that roads would be closed briefly during off-peak hours only for loading/unloading of construction materials at certain locations on a need basis. Hy D approved the scheme after scrutinisation by SLWG.

Our Comments

12. All road works are governed by the XP system and RTO. MTRC's construction works are further regulated by SLWG. In this case, both Hy D and TD had deployed staff to conduct site inspections upon receipt of the complaint. Hy D had explained why no enforcement action had been taken despite such inspections (paragraph 7). Moreover, some of the violations took place on private roads where Hy D had no power to institute prosecutions. As TD is not vested with law enforcement powers, any violations found can only be referred to the Police or SLWG for follow-up actions. In such circumstances, this Office considered it proper for Hy D and TD to act through SLWG and instruct MTRC and its contractor to take improvement measures.

13. As far as MTRC's construction projects were concerned, we agreed with Hy D and TD that SLWG was more than just a liaison platform. It was actually a monitoring mechanism with substantive power. Comprising representatives from MTRC and a number of Government departments, SLWG was vested with the authority to approve TTM schemes submitted by the contractor and could ask MTRC to take follow-up actions on any violations found (see para. 6). The departments concerned could also take corresponding enforcement actions.

14. As a major public transport operator, MTRC should care about its corporate image and social responsibility. Conniving at the contractor's violations might induce tighter control by Government departments or cancellation of its XPs by Hy D, and works progress would thus suffer. Consequently, MTRC had a strong reason to monitor its contractor's proper execution of SLWG's arrangements. Besides, MTRC could curb the malpractice of its contractors by administrative and contractual measures and that should be more direct and effective.

15. Nevertheless, we noted that Hy D's 21 inspections (paragraph 7) were not conducted within the time specified by the complainant, thus limiting the effectiveness of such inspections.

16. Overall, we found that both Hy D and TD had followed up the complainant's complaints proactively and in a timely manner. After our intervention, the complainant indicated that arrangements for road closures and traffic diversions at the sites concerned had generally improved.

Conclusion

17. In the light of the above, The Ombudsman considered that, although the alleged violations did take place, the complaint against TD and Hy D regarding ineffective control was unsubstantiated.

Summaries of Selected Cases Concluded by Full Investigation



Transport and Housing Bureau ("THB"), Hong Kong Housing Authority ("HKHA") and Housing Department ("HD")

Case Nos. OMB 2014/1924A, B & C – Public housing allocation

Allegation:
THB, HKHA and HD – delay in allocating a public housing unit to the complainants – unsubstantiated

Details of Complaint

In June 2007, the complainants applied for public rental housing ("PRH"). When they checked with HD in February 2014, they learned that their application had yet to reach the investigation stage prior to flat allocation. The complainants were dissatisfied that THB, HKHA and HD had delayed in processing their application and failed to adhere to the pledge of maintaining the Average Waiting Time ("AWT") at three years, such that they had been waiting nearly seven years without an allocation.

Our Findings

The AWT Pledge

2. The AWT refers to the average time taken between registration of application for PRH and the first flat offer for general applicants (including families and elderly singletons, but excluding non-elderly one-person applicants under the Quota and Points System) who were housed in the past 12 months. For those applicants who have opted to decline the first offer and continue waiting for the next one, the waiting time is counted up to the first offer only. Regarding the positions of end of June 2013 and end of March 2014, the AWT for PRH was 2.7 and 3.0 years respectively, in keeping with the pledge of HKHA.

3. Nevertheless, as at the end of June 2013, there were a total of 19,200 general applications which had been registered on the Waiting List for three years or above but had not received any flat offer. Among those applications, 13,200 were waiting for PRH units in the Urban District, of which 5,600 applications came from four-person families.

The Complainants' Case

4. In June 2007, the complainants applied for a three-person PRH unit in the Extended Urban District. In October 2008, their family size was changed into four members. Subsequently, they also changed their choice of district into Urban in July 2011. As noted above, the demand for four-person units in the Urban District was high. In June 2014, the complainants' application number was still way beyond the highest number that had reached the investigation stage, as announced by HD at that time. So they still had to wait.

HD's Comments

5. HD stated that had the complainants chosen the Extended Urban or New Territories District, their application would have already reached the allocation stage. In this connection, HD staff contacted the complainants by telephone to introduce its Express Flat Allocation Scheme and explain the progress of their application. However, the complainants decided not to join the scheme, nor would they consider changing their choice of district.

Our Comments

6. The complainants applied for a four-person PRH unit in the Urban District. They would not consider changing their district choice or accepting a flat offer under the Express Flat Allocation Scheme. Moreover, as they had changed their application particulars, the wait would thus be longer. We found no evidence that HD had delayed the allocation of PRH unit to them.

7. However, the current AWT pledge of three years covers families who are accorded higher priority and elderly applicants. The waiting time of applicants of other categories can differ greatly from the pledge. Without fully understanding how the AWT is calculated, applicants with situations similar to that of the complainants would inevitably feel disappointed after waiting for more than three years without any allocation.

8. Overall, The Ombudsman considered the complaint unsubstantiated, but HD should consider enhancing the transparency of the calculation of the AWT pledge, so as to let applicants have a clearer idea about the waiting time for PRH allocation.

A case calling for greater transparency



Water Supplies Department ("WSD") and Lands Department ("Lands D")

Case Nos. OMB 2013/2296A & B – Waterworks

Allegations:
WSD – refusing to take over and maintain the waterworks in the five streets owned by Government within a private housing estate, and shifting the responsibilities to the complainant – substantiated

Lands D – same – partially substantiated

Details of Complaint

The Owners' Corporation of a private housing estate ("the complainant") lodged a complaint with this Office against WSD and Lands D, alleging that they had refused to take over the waterworks (including the underground pipelines and fire hydrants) in the areas of the five streets owned by Government ("the Streets") within the estate. They further shifted the maintenance and repairs responsibilities to the complainant. The dispute had dragged on for 16 years.

Background

2. The estate concerned was developed in three phases, with a Certificate of Compliance ("CoC") issued for each phase by Lands D in 1986, 1992 and 1997. In other words, the relevant Government departments had checked and confirmed that the land owner had complied with the requirements and obligations they stipulated in the land lease conditions, and that the Streets had been taken over by Government. In fact, various types of facilities on the Streets, such as road signs, street lights and sewers, had been taken over by the relevant Government departments for management, maintenance and repairs. In September 1997, WSD liaised with the local District Lands Office ("DLO") in preparation for taking over the waterworks in the area in question.

Response from WSD

3. Information provided by WSD showed that the Department had refused to take over the waterworks in question on the following grounds:

(1) the set of drawings provided by the complainant in October 1997 was unclear. WSD had, in the ensuing seven years, made repeated requests to the complainant through DLO to submit a set of as-built drawings with clear indications of the pipeline alignments and associated fittings. WSD had also made it clear that it would not take over the waterworks before receipt of such drawings;

(2) the water pipes in question were not installed for Government by the developer upon WSD's request, and hence should not be regarded as public water supply facilities to be taken over by WSD; and

(3) the land grant conditions did not mention that Government needed to take over the pipelines. Therefore, when responding to the consultation regarding the estate's application for an Occupation Permit, WSD did not indicate that the development project failed to comply with the requirements. Neither did it ask the developer to submit the as-built drawings of the waterworks.

4. WSD asserted that it had followed Government guidelines in the Project Administration Handbook for Civil Engineering Works as well as industry practices in requesting the complainant to submit the as-built drawings. It is also a normal arrangement in the engineering profession when the constructing party is handing over the completed works to the maintenance party. WSD had also suggested the complainant to engage a licensed plumber to find out the exact locations of the underground pipelines. Before WSD took over such facilities, the responsibilities for their management, maintenance and repairs still rested with the complainant.

Response from Lands D

5. According to Lands D, WSD had confirmed the project's compliance with the requirements before Lands D issued a CoC for each phase of the estate. Furthermore, according to the land grant conditions, upon issuance of the CoC, the Streets and the responsibility for their maintenance and repairs were taken over by the relevant Government departments. DLO did point this out to WSD when transferring the drawings to the Department for the complainant. WSD, therefore, had to take over the waterworks in question.

6. Since WSD refused to take over the waterworks because of problems with the drawings, DLO, therefore, repeatedly wrote to the complainant to convey WSD's demand (to submit clear as-built drawings) and reiterate its stance. Moreover, maintenance and repairs of waterworks were not within the purview of Lands D. Consequently, it could only ask the complainant to comply with WSD's demand and submit the drawings required for WSD to consider taking over the installations.

Our Comments and Conclusion

WSD

7. If WSD considered that the pipelines in question could not be regarded as public water supply facilities to be taken over by the Department, it should have made it clear that it would not take over such waterworks, rather than just requiring the complainant to submit the as-built drawings. Furthermore, prior to Lands D's issuance of the CoC, WSD had confirmed the project's compliance with the relevant conditions. So, it should take over the water pipes.

8. Since WSD had all along stayed aloof from the matters, it missed the opportunities to request the as-built drawings from the estate developer. When it suddenly realised that it had to take over the facilities in question, it then requested the as-built drawings from the individual flat owners, who never possessed such drawings. It even asked them to hire professionals at their own expense to survey the distribution of pipelines, putting an unnecessary burden on those owners.

9. WSD failed to identify the problems and its handling procedures were not appropriate. Its senior management seemed to take no notice of the matter despite a long delay of 16 years. The complainant's dissatisfaction was justified. The Ombudsman, therefore, considered the complaint against WSD substantiated.

Lands D

10. While Lands D did point out to WSD that the responsibility for the Streets was taken over by Government since CoC had been issued, it failed to uphold this stance or discuss with WSD to resolve their differences. Rather, Lands D left the problem to the complainant and only reiterated WSD's incorrect views. There was impropriety on the part of Lands D.

11. In the light of the above, The Ombudsman considered the complaint against Lands D partially substantiated.

Recommendations

12. The Ombudsman recommended that:

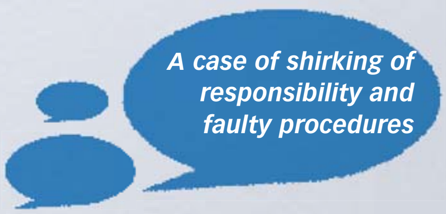
WSD

(1) take over immediately all the waterworks in question and consider requesting the as-built drawings from the estate developer. Professional surveys should be arranged for preparing the as-built drawings if necessary;

(2) draw up guidelines on taking over of waterworks and fire service installations built by developers in order to provide clear handling procedures. The guidelines should cover the actions and measures to be taken between the consultation exercise prior to Lands D's issuance of the CoC and the taking over of the relevant facilities. They should also set out the circumstances in which a case should be escalated to a more senior level for handling; and

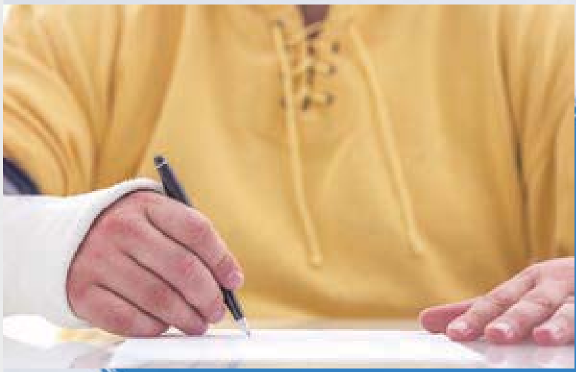
Lands D

(3) review the consultative arrangements prior to issuance of any CoC and to discuss with WSD and other relevant departments the clear demarcation of responsibilities. Where necessary, Lands D should issue guidelines to avoid recurrence of similar incidents.



Summary of a Selected Case Concluded by Inquiry

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)



Labour Department ("LD")

Case No. OMB 2013/4522 – Serious occupational accidents

Allegation: officers shifting responsibility to each other and refusing to follow up on a serious occupational accident

Details of Complaint

In March 2013, the complainant's father ("the deceased"), an electrician of Company A, died in a serious occupational accident ("the Accident"). Having reported the Accident to the Employees' Compensation Division ("ECD") of LD in mid-April 2013, the complainant asked ECD in September for progress of investigation. Officer X of ECD replied that he was not responsible for the investigation of the Accident and advised the complainant to enquire of the Operations Division ("OD") of LD. In reply to the complainant's enquiry, Officer Y of OD stated that OD could not start an investigation into the Accident because OD had not received any information about the Accident. He advised the complainant to ask Officer X to open a case file for the Accident.

2. The complainant considered Officers X and Y to be shifting to each other their responsibility of following up on the Accident.

Response from LD

3. LD explained to us that employers had to report serious occupational accidents to the Department by a specified form. On receipt of such a report, its Safety Management and Information Division ("SMID") would refer the case to OD for follow-up actions. Under the inter-departmental notification system, when the Police or the Fire Services Department became aware of a serious occupational accident, they would also notify OD immediately. In normal circumstances, when ECD was processing a compensation claim filed by family members of the victim of a serious occupational accident, OD would have already learned of the accident and started an investigation.

4. As to why OD had failed to investigate the Accident earlier, LD's explanation was as follows. Based on the information provided by the complainant in April 2013, Officer X opened a case file to help the deceased's family to make a compensation claim. However, Company A had not reported the Accident to the Department; it even denied having ever employed the deceased. Neither had OD received any notice of the Accident, nor was ECD aware that OD had not yet been notified of the Accident. In fact, the Police only notified OD of the Accident by issuing a memorandum to the latter in mid-October 2013. Although LD's internal computer system had put SMID on notice of the Accident, SMID did not refer the Accident to OD for investigation because it had not yet received Company A's report of the Accident.

5. OD only became aware of the Accident through Officer X when the complainant enquired of the progress of investigation in September 2013. OD then immediately referred the case to its relevant district office for follow-up actions.

6. LD admitted that there was room for improvement in both the inter-departmental notification system and LD's internal referral mechanism. The Department would consider the following improvement measures:

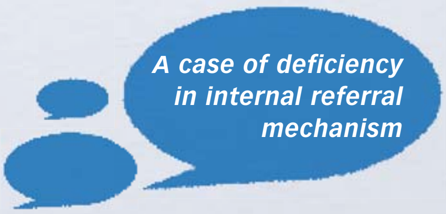
(1) to discuss with the Police for improvements to the notification system and to implement the improvements as soon as possible;

(2) to enhance communication between SMID and OD, and to check regularly the information in ECD's computer system to ensure that any serious occupational accident of which no report had been made to LD by the employer would be referred to OD for follow-up actions; and

(3) to remind OD staff to refer the case to its relevant district office immediately upon receipt of any enquiry about a serious occupational accident, and to keep all referral records properly.

Our Comments

7. Although ECD was aware of the Accident as early as in mid-April 2013, it did not refer the case to OD. Consequently, OD could not have started its investigation earlier. Accordingly, we urged LD to implement its improvement measures as soon as possible to avoid similar delays in following up on serious occupational accidents.



Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation

(1) Guidelines for clarity, consistency or efficiency in operation

Organisation (Case reference)	Administrative Enhancement
Customs and Excise Department (2014/2198(I))	Guidelines drawn up on checking candidates' identities during recruitment examinations to be provided to candidates when requested
Correctional Services Department (2012/3179)	Guidelines drawn up on the handling of inmates' requests for passing documents to visiting friends or relatives
Correctional Services Department (2013/2776)	Timeframe specified in internal instructions for handling requests of persons in custody for making referrals to other law enforcement agencies
Correctional Services Department (2014/1400) (2014/1472)	Procedures improved for distributing important forms/materials to inmates by asking the inmates to sign a receipt
Correctional Services Department (2014/1426)	Remand procedures improved by requesting inmates to sign a declaration regarding their need to attend court hearings or report to the police
Food and Environmental Hygiene Department (2013/1890)	Guidelines revised on entering premises for the investigations of complaints of water dripping from air-conditioners where only a small child or senile person is present and on collection of personal data
Fire Services Department (2013/3336)	Internal instructions introduced specifying that completion of standard procedures cannot be an excuse for delay in setting off for hospital
Hospital Authority (2012/3850)	Clearer guidelines issued on the administration of "Do Not Resuscitate" orders to ensure that proper records are kept when the patients' families were informed
Hospital Authority (2013/0778)	Requirements of different Hospitals on address proof standardised for booking obstetrics and gynaecology services
Housing Department (2013/3259)	Guidelines drawn up setting out clear principles and procedures for retention of CCTV records in public rental housing estates
Hong Kong Housing Society (2014/1828)	Internal guidelines on transfer revised to include further explanations on the acceptable reasons for transfer and exercise of discretion
Leisure and Cultural Services Department (2013/3018)	New guidelines issued to frontline staff to ensure proper monitoring of the use of hired facilities
Leisure and Cultural Services Department (2013/3627)	Guidelines revised to give clear instructions to frontline staff on the handling of readers' requests for using computer facilities in public libraries
Leisure and Cultural Services Department (2014/2139)	Clearer internal guidelines established for closure of football pitch due to wet and slippery condition

(2) Better arrangements for inter-departmental co-ordination	
Organisation (Case reference)	**Administrative Enhancement**
Food and Environmental Hygiene Department, Buildings Department (2013/5194A&B)	Reminders given to staff for better inter-departmental communication within the Joint Offices for Investigation of Water Seepage Complaints in dealing with complaints
Transport Department (2013/5280A)	Computer system revised so that staff could obtain the relevant information when disqualification orders are suspended

(3) Measures for better public enquiry/complaint handling	
Organisation (Case reference)	**Administrative Enhancement**
1823 (2013/2596)	Procedures laid down for reminders to be issued to client departments with overdue cases urging them to provide the reason for late reply and the target completion date either to the complainant direct or through 1823
Customs and Excise Department (2014/0069)	Staff reminded to use official email accounts in communication with the public
Correctional Services Department (2011/2857)	• Working group set up to explore the feasibility of installing a telephone recording system in the control room • Surveillance system upgraded to enable the audio and video records to be kept for a longer period
Food and Health Bureau (2014/2561(I))	More concrete template responses provided for staff to answer enquiries concerning carrying of baby formula across the borders
Fire Services Department (2013/0471A)	• Guidelines revised on handling fire hazard complaints involving unauthorised building works ("UBW") to expedite their referral to Buildings Department • Terminology in explaining the performance pledge revised to avoid misunderstanding by the public about the imminence of a fire hazard complaint
Hospital Authority (2013/4349)	Complaints handling procedures regarding quotation and tender exercises revised to ensure that all complaints are properly handled and replied to during or after the quotation/tender exercise
Leisure and Cultural Services Department (2013/1099)	Guidelines revised to ensure better recording and following up of complaint and injury cases in public swimming pools
Mandatory Provident Fund Schemes Authority (2014/1599)	Guidelines revised to instruct frontline staff to inform complainants of the outcome of investigation

Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation

(4) Measures for better client services	
Organisation (Case reference)	**Administrative Enhancement**
Buildings Department (2013/3317B)	New test introduced for detecting source of seepage
Equal Opportunities Commission (2012/5806A)	Publicity stepped up to inform the public of the different modes of case handling, complainants' rights and obligations and the requirement of providing identity/ disability proof
Hospital Authority (2012/5806B)	Keeping the smoke stop doors open (but linked with the central fire alarm system so that they may close in case of fire) to facilitate access by wheelchair users in a hospital
Hospital Authority (2013/0778)	Guidelines revised to allow expectant mothers to submit address proof later if they cannot provide such proof at the time of booking for obstetrics and gynaecology services
Housing Department (2013/4067)	Computer system for public rental housing tenancy management enhanced with pop-up reminders to remind staff to check the accuracy of the data entered
Immigration Department (2014/0179)	Time frame set for handling applications for residence as dependants of a Hong Kong resident
Inland Revenue Department (2013/4151)	New internal guidelines established for better handling of urgent tax cases
Judiciary Administrator (2013/4726A)	Procedures laid down for staff to inform appellants that all materials necessary to be included in the appeal bundle will be provided free of charge and whether or not the documents they request will be included in the appeal bundle, as well as the procedures for obtaining the documents
Social Welfare Department (2013/2545)	Guidelines revised to require frontline staff to send a written notification to a Comprehensive Social Security Assistance Scheme agent as soon as a decision to cease his appointment as agent has been made
Transport Department (2013/1699)	Frequency of a bus route during peak hours increased to better meet demand
Transport Department (2013/5280A)	Procedures revised to ensure that all prosecution cases under appeal are properly followed up

(5) Measures for more effective regulation or control	
Organisation (Case reference)	**Administrative Enhancement**
Buildings Department (2013/2959A)	Staff reminded, when inspecting an UBW item under complaint, to also inspect if there is any actionable adjoining item and to take action accordingly
Department of Health (2010/4919)	Amendments made to the Pharmacy and Poisons Ordinance to enhance the monitoring and control of clinical trials
Environmental Protection Department (2014/1685A)	Stringent approach adopted in approving night-time works and to handle noise complaints prudently
Fire Services Department (2013/3336)	Monitoring enhanced to probe into cases of ambulance suspected to have spent too much time on scene
Housing Department (2014/0029C)	Procedures laid down for advisory letters to be issued to owners of UBW despite that the works do not warrant prioritised enforcement
Housing Department (2014/0631)	Advice given to the property management agency under complaint on the use of appropriate wordings in warning letters it issues
Hong Kong Housing Society (2009/2659)	Sustainable and effective measures taken to ban UBW in a housing estate
Lands Department (2014/0298)	Lease enforcement action taken in respect of four set of premises in an industrial building used to provide funeral services for pets and the irregularity rectified
Leisure and Cultural Services Department (2013/0496)	Punishment increased against priority users that fail to take up a booked leisure facility
Leisure and Cultural Services Department (2013/1099)	New Guidelines issued regarding installation of Backstroke Turn Indicators in public swimming pools to enhance safety
Social Welfare Department (DI/335)	Standing instructions to the elderly homes revised to include information about subsidised items and principles of charging the clients

Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation

(6) Clearer/more reasonable rules and charges	
Organisation (Case reference)	**Administrative Enhancement**
Housing Department (2013/3845)	Clearer internal guidelines drawn up setting out the procedures for handling requests for deletion of family members from a tenancy, in particular to allow the members affected an opportunity to raise objections
Housing Department (2014/2419)	Clearer wordings for payment deadline used in notices issued to tenants
Post Office (2014/1676)	Rental conditions for Post Office Private Boxes revised to ensure compliance with the Post Office Regulations

(7) Clearer and more timely information to the public	
Organisation (Case reference)	**Administrative Enhancement**
Hospital Authority (2013/0778)	Address proof requirements of all hospitals standardised for booking obstetrics and gynaecology services and publicised on the Hospital Authority and various hospital websites
Leisure and Cultural Services Department (2012/0200)	New guidelines published on the Department's website regarding the new arrangement of charges for using playgrounds for unspecified purposes
Transport Department (2014/0629)	Clearer wordings provided about the estimated timeframe for processing applications for Personalised Vehicle Registration Marks to avoid misunderstanding
Water Supplies Department (2013/2603)	Clearer wordings used in approval letters for water supply applications to clarify relevant procedures and the applicants' responsibilities
Water Supplies Department (2013/3943)	Guidelines revised to require Meter Readers to issue a Notice to the Registered Consumer concerned immediately upon discovery of loss of a water meter
Water Supplies Department (2014/1685B)	Consultation process enhanced by using standardised consultation documents for distribution to affected residents, providing more information of water works to be carried out and informing them of the likely consequence of noise nuisance

(8) Training for staff	
Organisation (Case reference)	**Administrative Enhancement**
Hospital Authority (2013/1392)	Training provided to staff to ensure that key issues raised in enquiries and complaints are properly addressed
Hospital Authority (2013/4316)	Staff training strengthened on handling of enquiries and complaints related to the Personal Data (Privacy) Ordinance



Education Bureau ("EDB")

Case No. OMB 2013/5278(I) – Complaint investigation

Allegations: (1) failing to properly investigate a complaint about an unregistered tutorial centre – unsubstantiated but other inadequacies found; and (2) unreasonably refusing to disclose the dates of its inspections – substantiated

Details of Complaint

The complainant had complained to EDB about an unregistered tutorial centre in a factory building. After investigation, EDB informed the complainant that it had not found any educational course being conducted on the premises. The complainant asked EDB for the dates of its inspections. EDB staff replied that such information could not be disclosed.

Response from EDB

2. EDB officers had inspected the premises in light of the information from the complainant, but found no students or educational course being conducted. With new information from the complainant, EDB officers carried out another inspection and found some 50 children practising abacus, which is not an educational activity within the meaning of the Education Ordinance ("the Ordinance"). In the circumstances, EDB found the complaint unsubstantiated.

3. As regards the dates of its inspections, EDB explained that as its investigation was in progress, disclosure of such information would inevitably reveal its investigation procedures and arrangements and compromise the effectiveness of its enforcement actions. EDB, therefore, refused the complainant's request for the information by invoking paragraph 2.6(e) of Part 2 of the Code on Access to Information ("the Code"), i.e. "information the disclosure of which would harm or prejudice the prevention, investigation and detection of crime and offences, the apprehension or prosecution of offenders...".

Our Comments

4. EDB had indeed taken action on the complaint about the tutorial centre. Nevertheless, the Bureau had only informed the complainant that it had not found any educational course being conducted on the premises during its inspections, without further explaining that practising abacus is not governed by the Ordinance. No wonder the complainant still harboured doubts. Hence, The Ombudsman considered allegation (1) unsubstantiated but there were other inadequacies found.

5. EDB refused to inform the complainant of the inspection dates on the grounds that the disclosure of such information might affect its future investigation. We considered EDB to be overcautious, since disclosure of such information would hardly have any adverse effect on its inspection or investigation work. Indeed, EDB had mistakenly invoked paragraph 2.6(e) of Part 2 of the Code. Accordingly, The Ombudsman considered allegation (2) substantiated.

Conclusion and Recommendations

6. Overall, the complaint was partially substantiated.

7. The Ombudsman recommended that EDB:

   (1) let the complainant have the information requested as soon as possible; and

   (2) when replying to similar complaints/reports in future, explain clearly whether or not the activity in question is governed by the Ordinance, so as to avoid misunderstandings.

A case of wrong application of the Code



Food and Health Bureau ("FHB")

Case No. OMB 2013/2561(I) – List of milk powder subject to export control

Allegations: (1) failing to reply to the complainant's enquiry by email – substantiated; and (2) failing to release the list of milk powder subject to export control for the public's information – substantiated

Details of Complaint

During her visit to Hong Kong in April 2013, the complainant bought whole-milk powder of a certain brand. When she took it back to the Mainland, she was detained by the Customs and Excise Department ("C&ED") upon customs inspection and informed that the milk powder was among the controlled milk powder on a list provided to C&ED by FHB ("the List"), meaning it was subject to export control regulation. However, the List was only shown to her after she was arrested.

2. The complainant then emailed FHB to enquire whether the milk powder was subject to export control regulation but received no reply. She was also dissatisfied with FHB's refusal to release the List and alleged that this would make it difficult for the public to comply with the regulation.

Background

3. Since the Import and Export (General) (Amendment) Regulation 2013 ("the Regulation") took effect, export of powdered formula (commonly known as "milk powder") for infants and children under 36 months without a valid licence issued by the Director-General of Trade and Industry is prohibited.

Response from FHB

Reply to the Complainant's Enquiry

4. It was not until September 2013 that FHB replied to the complainant's email enquiry of April. In the light of this case, the Bureau had improved the operation of its email account accordingly as well as keeping proper records of replies to enquiries and of progress in the handling of complaints.

Whether the List Should be Released

5. According to FHB, the List was prepared for law enforcement purposes and its release to the public might compromise the effectiveness of enforcement or affect subsequent decisions on whether to institute prosecution. It was, therefore, not appropriate to release the List. Besides, when "parallel traders" exported controlled milk powder, they might take advantage of the List to defend themselves and challenge any law enforcement action against them by arguing that the relevant product was not on the List.

6. In response to our enquiry, FHB explained that the List was merely for Customs officers' reference in enforcement actions. Those officers would not rely solely on the List to determine whether the milk products to be exported were subject to control regulation. Where necessary, law enforcement officers could call the FHB hotline for advice. FHB staff would help liaise with suppliers and the Centre for Food Safety to request supplementary facts on products for further assessment. Therefore, if the List were to be released, it might lead the public to believe that it was the only consideration when deciding whether a product was subject to export control regulation.

7. Based on paragraph 2.13(a) of the Code on Access to Information ("the Code"), i.e. "Information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the department or any other person of priority of publication or commercial value", FHB considered it inappropriate to release the List.

8. Moreover, in the ever-changing powdered formula market, suppliers would revise the product description and usage instruction when changing product packaging, the new product might or might not be subject to export control regulation as its previous version. Every month, FHB invited milk powder suppliers to provide information on their newly imported products in order to update the List. However, provision of relevant information by the suppliers was on a voluntary basis. In other words, even if the List was updated regularly, it might not reflect the latest development of milk products in the market. It could be imagined that if FHB released the List, such list would probably have to be revised on a monthly or even weekly basis to include new products. That would certainly be confusing for the public. Given that updates from suppliers were voluntary, FHB could not guarantee that the List would be accurate and exhaustive. Therefore, FHB considered releasing the List undesirable.

9. Government had published a leaflet on the policy intent and scope of regulation for distribution to enhance public knowledge. The leaflet set out clearly the considerations that law enforcement officers would give when deciding whether a product was subject to export control regulation. It covered the nature of and details about products for different age groups with examples for illustration to inform the public of the scope of regulation.

Our Comments

Reply to the Complainant's Enquiry

10. FHB did not issue a reply to the complainant until some five months later. Moreover, it had not acknowledged receipt of it or issued any interim reply. There was delay on the part of FHB.

Whether the List Should be Released

11. We did not accept the various reasons given by FHB for not releasing the List. We believed the List could provide information about the types of milk powder subject to export control regulation. This would avoid members of the public breaking the law inadvertently or being misled by dishonest shop operators. We did not see any justifications in FHB's argument that enforcement authority and effectiveness would be undermined by releasing the List.

12. We took the view that as long as the List would include notes to explain clearly that it would be updated from time to time and that brands of milk powder not on the list might also be subject to export control regulation, misunderstanding could be avoided and people could not use it to disclaim responsibility. In fact, paragraph 2.13.2 of the Guidelines on Interpretation and Application reads, "The provision in paragraph 2.13(a) of the Code recognises that departments may withhold information relating to incomplete analysis, research or statistics where the incompleteness could produce a misleading impression. Departments may however decide to release this type of information if it is possible for the information to be accompanied by an explanatory note explaining the ways in which it is defective." Although the List would not be exhaustive, it could at least provide the public with information on those types of products subject to export control regulation, and so unnecessary disputes could be avoided.

13. FHB argued that the List only served as internal reference for law enforcement agencies. However, the Department also pointed out that the Government leaflet already provided clear information. We found these two statements contradictory. If the enforcement criteria were clear enough, law enforcement officers would not need any reference list at all. If FHB believed that even ordinary people could understand the enforcement criteria without a list, then why law enforcement officers would find it more difficult to understand the legislation and require a list to facilitate enforcement action?

14. We considered it a responsibility of law enforcement agencies to provide clear information and guidelines on the coverage of relevant legislation to avoid members of the public breaking the law inadvertently. Whatever reasons the accused would provide as defence and whether the court would accept them was beyond the control of those agencies.

15. Release of the List might not be the solution to all problems, but it could at least help to clarify the coverage of the legislation and provide a channel for updates without the need to wait until after legal proceedings had started. This is particularly important, as the maximum penalty were two years' imprisonment. In view of the above, the argument for releasing the List would, on balance, far outweigh the inconvenience and problems that the List might cause.

Conclusion and Recommendations

16. In the light of the above, The Ombudsman considered this complaint substantiated.

17. The Ombudsman recommended that FHB:

(1) comply with the Code and release the List for public reference. Should FHB consider the List to be containing "incomplete analysis, research or statistics where the incompleteness could produce a misleading impression", it could include explanatory notes as supplementary information in accordance with paragraph 2.13.2 of the Guidelines on Interpretation and Application; and

(2) provide accurate and detailed replies to public enquiries to avoid confusion.

A case of providing inadequate information



Hong Kong Housing Society ("HKHS")

Case No. OMB 2014/1836(R) – Withholding of document

Allegation: unreasonably refusing to provide the policy document on takeover of tenancy – substantiated

Details of Complaint

In April 2014, HKHS notified the complainant that he was not eligible to take over the tenancy of the subsidised rental flat formerly occupied by his late father. Unconvinced, the complainant requested a copy of the document on the relevant policy. However, HKHS refused the request on the grounds that the document was "for internal use".

Code on Access to Information

2. Where a complaint about refusing access to information is lodged against a public organisation which has not adopted the Code on Access to Information published by Government ("Government Code"), we will examine whether the organisation has drawn up reasonable and appropriate guidelines

for dealing with public requests for information, and whether such requests have been handled in compliance with the guidelines. In determining whether such guidelines are reasonable and appropriate, we will take reference from the Government Code and its Guidelines on Interpretation and Application.

Response from HKHS

3. HKHS had a document entitled "Take Over the Tenancy", which set out the eligibility criteria for taking over the tenancy of a public rental housing flat and the application procedures, etc. HKHS considered the document to be part of its internal working manual not for distribution to the public.

Our Comments

4. According to the Constitutional and Mainland Affairs Bureau, HKHS was one of the 22 public organisations that had voluntarily adopted the Government Code or similar guidelines. However, before our investigation into this complaint, HKHS had only a relatively simple guide on disclosure of information issued in 2005, stating its policy objectives of maintaining transparency and the approving authority for releasing "information of confidential or restricted nature". In the course of our investigation, HKHS informed us that it was in the process of formulating its own Code on Access to Information ("HKHS Code").

5. The reason cited by HKHS in refusing the complainant's request, i.e. that the document was "for internal use", could be interpreted as "information of confidential or restricted nature" under the 2005 guide. Nonetheless, the guide did not stipulate what types of information would be classified as confidential or restricted, nor did it provide any guidance on the basis for releasing or withholding such information. As such, we considered it totally inadequate for ensuring transparency.

6. In contrast, the Government Code stipulates that "information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of a department" may be withheld, and so explains why such information by its nature is unsuitable for disclosure.

7. After examining the document entitled "Take Over the Tenancy", we did not find any information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of HKHS. In fact, subsequent to this complaint, HKHS prepared a guidance note with similar information on takeover of tenancy in June 2014. HKHS indicated that it would provide the public with the guidance note when answering such enquiries in future.

8. To adequately meet the complainant's request for information, we urged HKHS to adopt the approach advocated in the Guidelines of the Government Code. In essence, it is preferable to provide a copy of the original record containing the requested information. If the original record contains information not suitable for disclosure, such information should be obliterated from the copy of the document to be provided to the requestor. If the extent of obliteration is such that the original document becomes meaningless or misleading, consideration should be given to providing an intelligible summary of the record.

9. Moreover, we noted that in the initial version of the HKHS Code provided to us in September 2014, it was stipulated that HKHS may withhold "internal papers prepared for, and records of internal meetings", as well as "information relating to the management and operations of HKHS and its businesses such as Codes, Guidelines and Manuals for internal use". We considered such provisions unjustified and not entirely in line with the Government Code, because there was still no explanation as to why those documents by their nature should not be disclosed.

Conclusion and Recommendations

10. To sum up, HKHS refused the complainant's request for information without valid grounds, and it also failed to consider other alternatives to meet his request. The Ombudsman, therefore, considered the complaint substantiated.

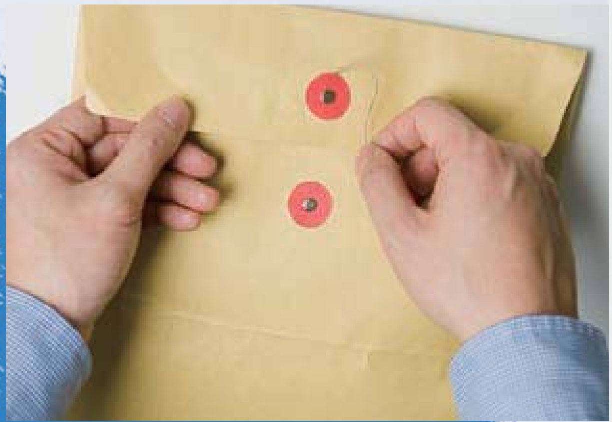
11. The Ombudsman recommended that HKHS:

(1) reconsider the complainant's request for the policy document;

(2) review and revise the HKHS Code to ensure that it is in line with the Government Code; and

(3) provide suitable staff training on handling public requests for information according to the revised HKHS Code.

A case of inadequate guidelines and unreasonable withholding of information



Official Receiver's Office ("ORO")

Case No. OMB 2013/4046(I) – Withholding of information

Allegation: wrongly rejecting a request for a copy of a letter – substantiated

Details of Complaint

The complainant asked ORO for a full copy of the letter issued by ORO to a bank concerning a property previously owned by him and his wife. However, ORO refused on the ground that the letter was an internal document. Dissatisfied, the complainant lodged a complaint with this Office.

Handling of Request

2. After receiving his email messages asking for a copy of the letter, an ORO officer called the complainant to seek clarification about his request. The officer then sent an email to the complainant, quoting the full content of the letter concerned and stating that a copy of the letter would not be provided on the ground that it was an internal document.

Response from ORO

3. ORO explained that its officer had understood from the telephone conversation with the complainant that he would accept a reproduction of the letter's content as an alternative to a copy of the letter itself. It was not until our intervention that ORO realised the complainant's dissatisfaction and so provided him with a copy of the letter.

4. With hindsight, ORO admitted that its initial rejection of the request was over-cautious. It had reminded its staff of strict compliance with the Code on Access to Information ("the Code").

Our Comments

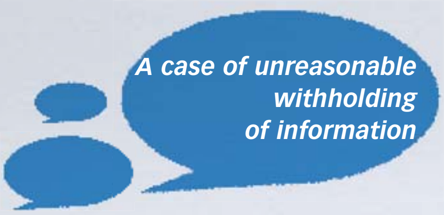
5. The Code requires Government departments to make available information to the public unless there are specific reasons to withhold it under Part 2 of the Code. The reason for non-disclosure cited by ORO, i.e. that the information was an internal document, is not provided for in the Code.

6. The complainant had made his request clear in his email messages. We considered that ORO had not taken into careful account the requirements of the Code in handling the complainant's request for information and its reason for refusal was not valid.

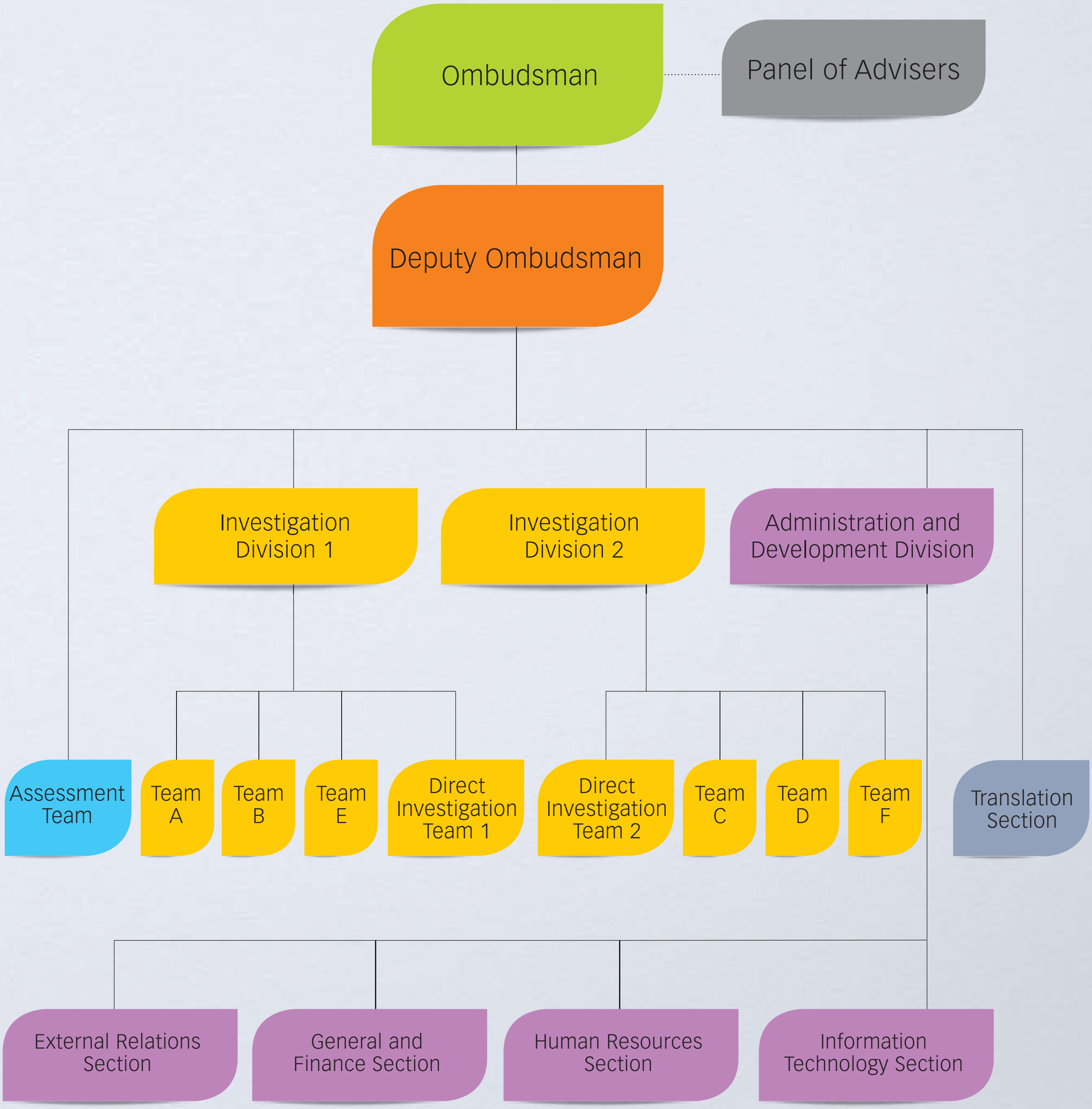
Conclusion

7. In the light of the above, The Ombudsman considered the complaint substantiated.

8. ORO subsequently met the complainant's request and reminded its staff to strictly comply with the Code. We considered ORO to have taken proper remedial measures.



Office of The Ombudsman



Panel of Advisers

Accountancy

Mr Tsai Wing Chung, Philip, JP

Engineering and Surveying

Ir Dr Chan Ka Ching, Andrew, BBS, JP
Mr Chan Yuk Ming, Raymond
Dr Hung Wing Tat, MH
Ir Leung Kwong Ho, Edmund, SBS, OBE, JP

Legal

Professor Johannes M M Chan, SC
Mr Chow Ka Ming, Anderson, SC
(Retired on 30/6/2014)
Professor Anne Scully-Hill
Dr Tai Yiu Ting, Benny, MH
Professor Wang Gui Guo
Ms Wong Pui Sze, Priscilla, JP

Medical and Nursing

Professor Chien Wai Tong
Professor Lo Chung Mau, JP
Professor Grace Tang, SBS, JP
Dr Tsang Fan Kwong

Social Work and Rehabilitation Services

Professor Chan Lai Wan, Cecilia, JP
Ms Fang Meng Sang, Christine, BBS, JP
Professor Ma Lai Chong, Joyce, JP
Mr Ng Wang Tsang, Andy

* In alphabetical order

Visits to the Office of The Ombudsman

– Annex 14 –

Date	Visitors
25 April 2014	Delegates from the Leadership Training for Mainland Entrepreneurs (HK-Taiwan Tour), arranged by the Chinese University of Hong Kong
16 May 2014	Participants of the "Training Course on Management of Public Finance" for officials from Qinghai Province, arranged by the Hong Kong Financial Services Institute
4 June 2014	Participants of the "Training Course on Human Resources Management" for officials from Guizhou Province, arranged by the Hong Kong Financial Services Institute
5 June 2014	Participants of the "Advanced Programme for Chinese Senior Judges", arranged by the City University of Hong Kong
10 June 2014	Department of Justice Training Scheme 2013/2014, arranged by the Department of Justice
18 June 2014	Delegates from the National Institute of Public Administration of Indonesia
19 June 2014	Participants of the "Training Course on Anti-corruption and Construction for Civil Servants" for officials from Xinjiang Uygur Autonomous Region, arranged by the Hong Kong Financial Services Institute
24 June 2014	Participants of the "Training Course on Social Management" for officials from Qinghai Province, arranged by the Hong Kong Financial Services Institute
3 July 2014	Participants of the "Training Course on Anti-corruption and Construction, Discipline Inspection and Supervision" for officials from Guizhou Province, arranged by the Hong Kong Financial Services Institute
7 July 2014	Common Law Scholarship awardees from Peking University, arranged by the Hong Kong Bar Association
6 August 2014	Participants of the "Training Course on Interaction between Government and Society" for officials from Chancheng District, Foshan Municipality, arranged by the Hong Kong Institute of Asia-Pacific Studies, the Chinese University of Hong Kong
8 August 2014	Participants of the "Training Course on Policy Study on Provision of Services to the 'Upgraded' ASEAN-China Free Trade Area" for officials from Guangxi, arranged by the Hong Kong Institute for Public Administration
14 August 2014	Delegates from the "Exchange Programme for Civil Servants" from Hubei Province, arranged by the Vocational Training Council
18 August 2014	Participants of the "Training Course on Anti-corruption and Construction, Discipline Inspection and Supervision" for officials from Guizhou Province, arranged by the Hong Kong Financial Services Institute
15 September 2014	Mr Ellis Mathews, Head of Division for China, Hong Kong, Macao, Taiwan and Mongolia, European External Action Service, the European Union, arranged by the Information Services Department
18 September 2014	Delegates from Shenzhen Municipal Supervision Bureau, arranged by the Vocational Training Council

Visits to the Office of The Ombudsman

– Annex 14 –

Date	Visitors
16 October 2014	Mr Zheng Shanhe, Bureau Chief, Shanghai Municipal Bureau of Justice, arranged by the Information Services Department
24 October 2014	Delegates from Tianjin Municipal Supervision Bureau, arranged by Tsinlien Group Company Limited
4 November 2014	Participants of the "Exchange Programme for Mainland Civil Servants", arranged by the Hong Kong Institute for Public Administration
7 November 2014	Commissioner of the U.S. Consumer Product Safety Commission, arranged by the U.S. Consumer Product Safety Commission
12 November 2014	Delegates from Shenzhen Municipal Audit Bureau, arranged by the Vocational Training Council
17 November 2014	Participants of the "12th Postgraduate Certificate Course in Corruption Studies", arranged by the School of Professional and Continuing Education, the University of Hong Kong
20 November 2014	Delegates from the School of Administration, Guizhou Province, arranged by the Hong Kong Financial Services Institute
21 November 2014	Delegates from Guizhou Provincial Local Taxation Bureau, arranged by the Hong Kong Financial Services Institute
25 November 2014	Delegates from civil servants under the legal system of Guizhou Province, arranged by the Hong Kong Financial Services Institute
25 November 2014	Mr Gan Zangchun, Deputy Director of the Legislative Affairs Office of the State Council of China, arranged by the Information Services Department
27 November 2014	Participants of the "49th Training Course for Middle-aged and Young Leading Cadres" for officials from Qinghai Province, arranged by Eternal Chance Investment Limited
3 December 2014	Delegates from Shezhen Municipal Establishment Office, arranged by the Vocational Training Council
9 January 2015	Delegates from Justice Departments/Bureaux in mainland China, arranged by the Department of Justice
13 January 2015	Postgraduate law students from universities in mainland China, arranged by the Institute of Legal Education
4 February 2015	Students from Kookmin University, Korea, arranged by the City University of Hong Kong
23 March 2015	Mr Zhang Enxi, Deputy Director of the State Bureau for Letters and Calls of China, arranged by the Information Services Department
25 March 2015	Mainland law students, arranged by the Legal Education Fund Limited

The Ombudsman, Hong Kong
Annual Report 2015



Financial Statements

for the year ended 31 March 2015


Region 01
Region 02
Region 03
Region 04
Region 05

Independent auditor's report to The Ombudsman

(Established in Hong Kong pursuant to the Ombudsman Ordinance)

We have audited the financial statements of The Ombudsman set out on pages 3 to 22, which comprise the balance sheet as at 31 March 2015, the statement of income and expenditure, statement of comprehensive income, statement of changes in funds and cash flow statement for the year then ended and a summary of significant accounting policies and other explanatory information.

The Ombudsman's responsibility for the financial statements

The Ombudsman is responsible for the preparation of financial statements that give a true and fair view in accordance with Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants and for such internal control as The Ombudsman determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. This report is made solely to you, in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

We conducted our audit in accordance with Hong Kong Standards on Auditing issued by the Hong Kong Institute of Certified Public Accountants. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of the financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by The Ombudsman, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Independent auditor's report to The Ombudsman (continued)

(Established in Hong Kong pursuant to the Ombudsman Ordinance)

Opinion

In our opinion, the financial statements give a true and fair view of the state of affairs of The Ombudsman as at 31 March 2015 and of its surplus and cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards.

KPMG
Certified Public Accountants

8th Floor, Prince's Building
10 Chater Road
Central, Hong Kong

15 May 2015

Statement of income and expenditure for the year ended 31 March 2015

(Expressed in Hong Kong dollars)

	Note	2015	2014
Income			
Government subventions	3	$ 107,123,357	$ 102,386,000
Amortisation of deferred Government subventions	3	1,814,220	1,814,220
Interest income on bank deposits		5,783,332	4,946,993
Other income		354	19,650
		$ 114,721,263	$ 109,166,863
Expenditure			
Operating expenses	4	(105,193,915)	(95,981,147)
Surplus for the year		$ 9,527,348	$ 13,185,716

Statement of comprehensive income for the year ended 31 March 2015

The Ombudsman had no components of comprehensive income other than "surplus for the year" in either of the years presented. Accordingly, no separate statement of comprehensive income is presented as The Ombudsman's "total comprehensive income" was the same as the "surplus for the year" in both years.

The notes on pages 9 to 22 form part of these financial statements.

Balance sheet at 31 March 2015

(Expressed in Hong Kong dollars)

	Note	2015	2014
ASSETS			
Non-current asset			
Property, plant and equipment	7	$ 74,949,577	$ 76,804,523
Current assets			
Deposits and prepayments		$ 908,158	$ 671,389
Interest receivable		2,782,282	2,426,817
Time deposits with original maturity over three months		342,661,000	331,497,500
Cash and cash equivalents	8	10,528,086	9,155,928
		$ 356,879,526	$ 343,751,634
Total assets		$ 431,829,103	$ 420,556,157
LIABILITIES			
Non-current liabilities			
Contract gratuity payable – non-current	9	$ 4,365,340	$ 1,619,656
Deferred Government subventions – non-current	3	66,157,318	67,971,538
		$ 70,522,658	$ 69,591,194
Current liabilities			
Other payables and accruals		$ 3,955,512	$ 3,330,345
Contract gratuity payable – current	9	6,963,798	6,774,831
Deferred Government subventions – current	3	1,814,220	1,814,220
		$ 12,733,530	$ 11,919,396
Total liabilities		$ 83,256,188	$ 81,510,590

Balance sheet at 31 March 2015 (continued)

(Expressed in Hong Kong dollars)

	Note	2015	2014
FUNDS			
Accumulated funds		**$ 348,572,915**	$ 339,045,567
Total funds		**$ 348,572,915**	$ 339,045,567
Total funds and liabilities		**$ 431,829,103**	$ 420,556,157

Approved and authorised for issue by The Ombudsman on 15 May 2015

Ms Connie Lau
The Ombudsman

The notes on pages 9 to 22 form part of these financial statements.

Statement of changes in funds for the year ended 31 March 2015

(Expressed in Hong Kong dollars)

		Accumulated funds
Balance at 1 April 2013	$	325,859,851
Change in funds for 2013/2014:		
Surplus and total comprehensive income for the year		13,185,716
Balance at 31 March 2014 and 1 April 2014	$	339,045,567
Change in funds for 2014/2015:		
Surplus and total comprehensive income for the year		9,527,348
Balance at 31 March 2015	$	348,572,915

The notes on pages 9 to 22 form part of these financial statements.

Cash flow statement for the year ended 31 March 2015

(Expressed in Hong Kong dollars)

	Note	2015	2014
Operating activities			
Surplus for the year		$ 9,527,348	$ 13,185,716
Adjustments for:			
Interest income		(5,783,332)	(4,946,993)
Depreciation		3,523,872	2,628,578
Amortisation of deferred Government subventions		(1,814,220)	(1,814,220)
Loss/(gain) on disposal of property, plant and equipment		52	(958)
Operating surplus before changes in working capital		$ 5,453,720	$ 9,052,123
(Increase)/decrease in deposits and prepayments		(236,769)	1,975,805
Increase in other payables and accruals		625,167	140,796
Increase/(decrease) in contract gratuity payable		2,934,651	(862,705)
Net cash generated from operating activities		$ 8,776,769	$ 10,306,019
Investing activities			
Interest received		$ 5,427,867	$ 4,507,464
Payments for purchase of property, plant and equipment		(1,668,978)	(4,201,640)
Proceeds from disposal of property, plant and equipment		–	1,929
Increase of time deposits with original maturity over three months		(342,661,000)	(331,497,500)
Time deposits with original maturity over three months matured		331,497,500	320,712,000
Net cash used in investing activities		$ (7,404,611)	$ (10,477,747)

7

Cash flow statement for the year ended 31 March 2015 (continued)

(Expressed in Hong Kong dollars)

	Note	2015	2014
Net increase/(decrease) in cash and cash equivalents		$ 1,372,158	$ (171,728)
Cash and cash equivalents at beginning of the year	8	9,155,928	9,327,656
Cash and cash equivalents at end of the year	8	$ 10,528,086	$ 9,155,928

The notes on pages 9 to 22 form part of these financial statements.

1 Status of The Ombudsman

The Ombudsman was established as a corporation by statute on 19 December 2001. The functions of The Ombudsman are prescribed by the Ombudsman Ordinance.

The address of its registered office is 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong.

2 Significant accounting policies

(a) Statement of compliance

These financial statements have been prepared in accordance with all applicable Hong Kong Financial Reporting Standards ("HKFRSs"), which collective term includes all applicable individual Hong Kong Financial Reporting Standards, Hong Kong Accounting Standards ("HKASs") and Interpretations issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA") and accounting principles generally accepted in Hong Kong. A summary of the significant accounting policies adopted by The Ombudsman is set out below.

The HKICPA has issued several amendments to HKFRSs and one new Interpretation that are first effective for the current accounting period of The Ombudsman. The adoption of these amendments to HKFRSs and the new Interpretation did not have material impact on The Ombudsman's financial statements and The Ombudsman has not applied any new standard or interpretation that is not yet effective for the current accounting period (see note 14).

(b) Basis of preparation of the financial statements

The measurement basis used in the preparation of the financial statements is the historical cost basis.

The preparation of financial statements in conformity with HKFRSs requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets, liabilities, income and expenses. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgements about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

2 Significant accounting policies (continued)

(c) Property, plant and equipment

Property, plant and equipment are stated at cost less accumulated depreciation and impairment losses.

Depreciation is calculated to write off the cost of items of property, plant and equipment, less their estimated residual value, if any, using the straight line method over their estimated useful lives as follows:

–	Interest in leasehold land held for own use under finance leases	Over unexpired term of lease
–	Building	40 years
–	Leasehold improvements	10 years
–	Office furniture	5 years
–	Office equipment	5 years
–	Computer equipment	4 years
–	Motor vehicles	5 years

No provision for depreciation is made for construction in progress until such time when the assets are substantially completed and ready for use.

Both the useful life of an asset and its residual value, if any, are reviewed annually.

The carrying amounts of property, plant and equipment are reviewed for indications of impairment at each balance sheet date. An impairment loss is recognised in the statement of income and expenditure if the carrying amount of an asset, or the cash-generating unit to which it belongs, exceeds its recoverable amount. The recoverable amount of an asset, or of the cash-generating unit to which it belongs, is the greater of its fair value less costs of disposal and value in use. In assessing value in use, the estimated future cash flows are discounted to their present values using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the assets. An impairment loss is reversed if there has been a favourable change in the estimates used to determine the recoverable amount.

Gains or losses arising from the retirement or disposal of an item of property, plant and equipment are determined as the difference between the net disposal proceeds and the carrying amount of the item and are recognised in the statement of income and expenditure on the date of retirement or disposal.

2 Significant accounting policies (continued)

(d) Leased assets

An arrangement, comprising a transaction or a series of transactions, is or contains a lease if The Ombudsman determines that the arrangement conveys a right to use a specific asset or assets for an agreed period of time in return for a payment or a series of payments. Such a determination is made based on an evaluation of the substance of the arrangement and is regardless of whether the arrangement takes the legal form of a lease.

(i) Classification of assets leased to The Ombudsman

Assets that are held by The Ombudsman under leases which transfer to The Ombudsman substantially all the risks and rewards of ownership are classified as being held under finance leases. Leases which do not transfer substantially all the risks and rewards of ownership to The Ombudsman are classified as operating leases.

(ii) Assets acquired under finance leases

Where The Ombudsman acquires the use of assets under finance leases, the amounts representing the fair value of the leased asset, or, if lower, the present value of the minimum lease payments, of such assets are included in property, plant and equipment and the corresponding liabilities, net of finance charges, are recorded as obligations under finance leases. Depreciation is provided at rates which write off the cost of the assets over the term of the relevant lease or, where it is likely The Ombudsman will obtain ownership of the asset, the life of the asset, as set out in note 2(c). Impairment losses are accounted for in accordance with the accounting policy as set out in note 2(c).

(iii) Operating lease charges

Where The Ombudsman has the use of other assets under operating leases, payments made under the leases are charged to profit or loss in equal instalments over the accounting periods covered by the lease term, except where an alternative basis is more representative of the pattern of benefits to be derived from the leased asset. Lease incentives received are recognised in the statement of income and expenditure as an integral part of the aggregate net lease payments made.

(e) Receivables

Receivables are initially recognised at fair value and thereafter stated at amortised cost using the effective interest method, less allowance for impairment of doubtful debts, except where the effect of discounting would be immaterial. In such cases, the receivables are stated at cost less allowance for impairment of doubtful debts.

2 Significant accounting policies (continued)

(e) Receivables (continued)

Impairment losses for bad and doubtful debts are recognised when there is objective evidence of impairment and are measured as the difference between the carrying amount of the financial asset and the estimated future cash flows, discounted at the asset's original effective interest rate where the effect of discounting is material. Objective evidence of impairment includes observable data that come to the attention of The Ombudsman about events that have an impact on the asset's estimated future cash flows such as significant financial difficulty of the debtor.

Impairment losses for receivables whose recovery is considered doubtful but not remote are recorded using an allowance account. When The Ombudsman is satisfied that recovery is remote, the amount considered irrecoverable is written off against the receivable directly and any amounts held in the allowance account relating to that debt are reversed. Subsequent recoveries of amounts previously charged to the allowance account are reversed against the allowance account. Other changes in the allowance account and subsequent recoveries of amounts previously written off directly are recognised in the statement of income and expenditure.

(f) Other payables and accruals

Other payables and accruals are initially recognised at fair value and thereafter stated at amortised cost unless the effect of discounting would be immaterial, in which case they are stated at cost.

(g) Cash and cash equivalents

Cash and cash equivalents comprise cash at bank and on hand, demand deposits with banks and other financial institutions, and short-term, highly liquid investments that are readily convertible into known amounts of cash and which are subject to an insignificant risk of changes in value, having been within three months of maturity at acquisition.

(h) Employee benefits

Salaries, gratuities, paid annual leave, leave passage and the cost to The Ombudsman of non-monetary employee benefits are accrued in the year in which the associated services are rendered by employees of The Ombudsman. Where payment or settlement is deferred and the effect would be material, these amounts are stated at their present values.

Contributions to Mandatory Provident Fund ("MPF") as required under the Hong Kong Mandatory Provident Fund Schemes Ordinance are recognised as an expenditure in the statement of income and expenditure as incurred.

2 Significant accounting policies (continued)

(i) Provisions and contingent liabilities

Provisions are recognised for liabilities of uncertain timing or amount when The Ombudsman has a legal or constructive obligation arising as a result of a past event, it is probable that an outflow of economic benefits will be required to settle the obligation and a reliable estimate can be made. Where the time value of money is material, provisions are stated at the present value of the expenditure expected to settle the obligation.

Where it is not probable that an outflow of economic benefits will be required, or the amount cannot be estimated reliably, the obligation is disclosed as a contingent liability, unless the probability of outflow of economic benefits is remote. Possible obligations, whose existence will only be confirmed by the occurrence or non-occurrence of one or more future events are also disclosed as contingent liabilities unless the probability of outflow of economic benefits is remote.

(j) Income recognition

Income is measured at the fair value of the consideration received or receivable. Provided it is probable that the economic benefits will flow to The Ombudsman and the income and expenditure, if applicable, can be measured reliably, income is recognised in the statement of income and expenditure as follows:

(i) Government subventions

An unconditional Government subvention is recognised as income in the statement of income and expenditure when the grant becomes receivable. Other Government subventions are recognised in the balance sheet initially when there is reasonable assurance that they will be received and that The Ombudsman will comply with the conditions attaching to them. Subventions that compensate The Ombudsman for expenses incurred are recognised as income in the statement of income and expenditure on a systematic basis in the same periods in which the expenses are incurred. Subventions that compensate The Ombudsman for the cost of an asset are included in the balance sheet as deferred Government subventions and recognised in the statement of income and expenditure over the period of the lease term or useful live of the related asset on a basis consistent with the depreciation policy as set out in note 2(c).

(ii) Interest income

Interest income is recognised as it accrues using the effective interest method.

(iii) Other income

Other income is recognised on an accrual basis.

2 Significant accounting policies (continued)

(k) Related parties

(a) A person, or a close member of that person's family, is related to The Ombudsman if that person:

(i) has control or joint control over The Ombudsman;

(ii) has significant influence over The Ombudsman; or

(iii) is a member of the key management personnel of The Ombudsman.

(b) An entity is related to The Ombudsman if any of the following conditions applies:

(i) The entity and The Ombudsman are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).

(ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).

(iii) Both entities are joint ventures of the same third party.

(iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.

(v) The entity is a post-employment benefit plan for the benefit of employees of either The Ombudsman or an entity related to The Ombudsman.

(vi) The entity is controlled or jointly controlled by a person identified in (k)(a).

(vii) A person identified in (k)(a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).

Close members of the family of a person are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity.

3 Government subventions and deferred Government subventions

Government subventions represent the funds granted by the Government for daily operations of The Ombudsman.

Deferred Government subventions represent the funds granted by the Government for prepaid lease payments, the purchase of building and certain leasehold improvements. Amortisation of deferred Government subventions is recognised on a straight line basis over the period of the lease term of 54 years of interest in leasehold land held for own use under finance leases for prepaid lease payments, and the useful lives of 40 years and 10 years of building and leasehold improvements respectively in accordance with the accounting policies set out in notes 2(c) and (j)(i).

At 31 March 2015, the deferred Government subventions are expected to be amortised as follows:

	2015	2014
Within one year and included in current liabilities	$ 1,814,220	$ 1,814,220
After one year and included in non-current liabilities	66,157,318	67,971,538
	$ 67,971,538	$ 69,785,758

4 Operating expenses

	2015	2014
Employee benefit expenses (note 5)	$ 85,905,105	$ 79,345,319
Depreciation of property, plant and equipment	3,523,872	2,628,578
Rates and management fee	2,834,251	2,721,491
Operating lease rentals in respect of parking spaces	91,200	91,200
Auditor's remuneration	77,300	73,600
Announcement of public interest expense	8,417,463	6,071,549
Other expenses	4,344,724	5,049,410
	$ 105,193,915	$ 95,981,147

5 Employee benefit expenses

	2015	2014
Salaries and allowances	**$ 75,197,421**	$ 69,314,571
Contract gratuity	**7,168,661**	7,184,005
Pension costs – MPF scheme	**1,948,447**	1,504,641
Unutilised annual leave	**123,838**	36,137
Other employee benefit expenses	**1,466,738**	1,305,965
	$ 85,905,105	$ 79,345,319

6 Key management compensation

	2015	2014
Short-term employee benefits	**$ 14,033,933**	$ 13,034,145
Post-employment benefits	**1,858,169**	1,990,452
	$ 15,892,102	$ 15,024,597

7 Property, plant and equipment

	Interest in leasehold land held for own use under finance leases	Building	Leasehold improvements	Office furniture	Office equipment	Computer equipment	Motor vehicles	Construction in progress	Total
Cost:									
At 1 April 2013	$ 74,900,000	$ 16,800,000	$ 13,979,173	$ 588,329	$ 888,206	$ 3,012,773	$ 179,801	$ –	$ 110,348,282
Additions	–	–	1,227,923	98,594	656,833	911,579	884,970	1,457,095	5,236,994
Disposals	–	–	–	–	(3,181)	(219,875)	–	–	(223,056)
At 31 March 2014	$ 74,900,000	$ 16,800,000	$ 15,207,096	$ 686,923	$ 1,541,858	$ 3,704,477	$ 1,064,771	$ 1,457,095	$ 115,362,220
Accumulated depreciation:									
At 1 April 2013	$ 15,457,584	$ 4,642,438	$ 12,072,577	$ 457,066	$ 639,518	$ 2,741,629	$ 140,392	$ –	$ 36,151,204
Charge for the year	1,394,220	420,000	311,398	77,074	122,908	219,496	83,482	–	2,628,578
Written back on disposals	–	–	–	–	(2,210)	(219,875)	–	–	(222,085)
At 31 March 2014	$ 16,851,804	$ 5,062,438	$ 12,383,975	$ 534,140	$ 760,216	$ 2,741,250	$ 223,874	$ –	$ 38,557,697
Net book value:									
At 31 March 2014	$ 58,048,196	$ 11,737,562	$ 2,823,121	$ 152,783	$ 781,642	$ 963,227	$ 840,897	$ 1,457,095	$ 76,804,523

7 Property, plant and equipment (continued)

	Interest in leasehold land held for own use under finance leases	Building	Leasehold improvements	Office furniture	Office equipment	Computer equipment	Motor vehicles	Construction in progress	Total
Cost:									
At 1 April 2014	$74,900,000	$16,800,000	$15,207,096	$ 686,923	$1,541,858	$3,704,477	$1,064,771	$ 1,457,095	$115,362,220
Additions	–	–	318,274	122,862	14,465	1,213,377	–	–	1,668,978
Transfers	–	–	–	–	–	1,457,095	–	(1,457,095)	–
Disposals	–	–	–	(395)	(4,826)	(340,839)	–	–	(346,060)
At 31 March 2015	$74,900,000	$16,800,000	$15,525,370	$ 809,390	$1,551,497	$6,034,110	$1,064,771	$ –	$116,685,138
Accumulated depreciation:									
At 1 April 2014	$16,851,804	$ 5,062,438	$12,383,975	$ 534,140	$ 760,216	$2,741,250	$ 223,874	$ –	$ 38,557,697
Charge for the year	1,394,220	420,000	377,370	55,705	194,355	901,780	180,442	–	3,523,872
Written back on disposals	–	–	–	(395)	(4,826)	(340,787)	–	–	(346,008)
At 31 March 2015	$18,246,024	$ 5,482,438	$12,761,345	$ 589,450	$ 949,745	$3,302,243	$ 404,316	$ –	$ 41,735,561
Net book value:									
At 31 March 2015	$56,653,976	$11,317,562	$ 2,764,025	$ 219,940	$ 601,752	$2,731,867	$ 660,455	$ –	$ 74,949,577

The Ombudsman's interest in leasehold land is held under long lease.

8 Cash and cash equivalents

	2015	2014
Cash at bank	$ 10,523,086	$ 9,150,656
Cash in hand	5,000	5,272
	$ 10,528,086	$ 9,155,928

9 Contract gratuity payable

The amount represents the gratuity payable to staff on expiry of their employment contracts. The amount of gratuity ranges from 10% to 25% (2014: 10% to 25%) of the basic salary less employer's contributions to MPF.

10 Taxation

The Ombudsman is exempt from taxation in respect of the Inland Revenue Ordinance in accordance with Schedule 1A Section 5(1) of the Ombudsman Ordinance.

11 Commitments

(a) Capital commitments outstanding at 31 March 2015 not provided for in the financial statements were as follows:

	2015	2014
Contracted for	$ 187,153	$ 1,005,837

(b) At 31 March 2015, the total future aggregate minimum lease payments under non-cancellable operating leases in respect of parking spaces are payable as follows:

	2015	2014
Within 1 year	$ 7,600	$ 7,600

12 Management of accumulated funds

The Ombudsman's primary objective when managing its accumulated funds is to safeguard The Ombudsman's ability to continue as a going concern. The Ombudsman is not subject to externally imposed requirements relating to its accumulated funds.

13 Financial risk management and fair values of financial instruments

Risk management is carried out by the accounting department under policies approved by The Ombudsman. The accounting department identifies and evaluates financial risks in close co-operation with the operating units. The Ombudsman provides written principles for overall risk management such as interest-rate risk, use of financial instruments and investing excess liquidity.

The Ombudsman's exposure to credit, liquidity, interest rate and currency risks are described below:

(a) Credit risk

The Ombudsman's credit risk is primarily attributable to time deposits and cash and cash equivalents. Management has a credit policy in place and the exposure to this credit risk is monitored on an ongoing basis.

Cash is deposited with financial institutions with sound credit ratings to minimise credit exposure.

The maximum exposure to credit risk is represented by the carrying amount of each financial asset in the balance sheet. The Ombudsman does not provide any guarantees which would expose The Ombudsman to credit risk.

(b) Liquidity risk

The Ombudsman's policy is to regularly monitor its current and expected liquidity requirements and to ensure that it maintains sufficient reserves of cash to meet its liquidity requirements in the short and longer term.

The following table shows the remaining contractual maturities at the balance sheet date of The Ombudsman's financial liabilities, which are based on contractual undiscounted cash flows and the earliest date The Ombudsman can be required to pay:

	2015				
	Contractual undiscounted cash outflow				
	Within 1 year or on demand	More than 1 year but less than 2 years	More than 2 years but less than 5 years	Total contractual undiscounted cash flows	Carrying amount
Contract gratuity payable	**$ 6,963,798**	**$ 3,637,037**	**$ 728,303**	**$ 11,329,138**	**$11,329,138**
Other payables and accruals	**3,955,512**	**-**	**-**	**3,955,512**	**3,955,512**
	$10,919,310	**$ 3,637,037**	**$ 728,303**	**$ 15,284,650**	**$15,284,650**

13 Financial risk management and fair values of financial instruments (continued)

(b) Liquidity risk (continued)

	2014				
	Contractual undiscounted cash outflow				
	Within 1 year or on demand	More than 1 year but less than 2 years	More than 2 years but less than 5 years	Total contractual undiscounted cash flows	Carrying amount
Contract gratuity payable	$ 6,774,831	$ 649,770	$ 969,886	$ 8,394,487	$ 8,394,487
Other payables and accruals	3,330,345	–	–	3,330,345	3,330,345
	$ 10,105,176	$ 649,770	$ 969,886	$ 11,724,832	$ 11,724,832

(c) Interest rate risk

Interest rate risk is the risk that the value of a financial instrument will fluctuate due to changes in market interest rates. The Ombudsman's only exposure to interest rate risk is via its bank balances which bear interest at market rates.

Sensitivity analysis

At 31 March 2015, it is estimated that a general increase/decrease of 100 (2014: 100) basis points in interest rates, with all other variables held constant, would have increased/decreased The Ombudsman's surplus and accumulated funds by approximately $3,531,000 (2014: $3,406,000).

The sensitivity analysis above has been determined assuming that the change in interest rates had occurred at the balance sheet date and had been applied to the financial instruments which expose The Ombudsman to interest rate risk at that date. The 100 basis points increase or decrease represents management's assessment of a reasonably possible change in interest rates over the period until the next annual balance sheet date. The analysis is performed on the same basis for 2014.

(d) Currency risk

The Ombudsman has no exposure to currency risk as all of The Ombudsman's transactions are denominated in Hong Kong dollars.

13 Financial risk management and fair values of financial instruments (continued)

(e) Fair value measurement

The carrying amounts of The Ombudsman's financial instruments carried at cost or amortised cost are not materially different from their fair values at 31 March 2015 and 2014.

14 Possible impact of amendments, new standards and interpretations issued but not yet effective for the year ended 31 March 2015

Up to the date of issue of these financial statements, the HKICPA has issued a number of amendments and new standards which are not yet effective for the year ended 31 March 2015 and which have not been adopted in these financial statements.

The Ombudsman is in the process of making an assessment of what the impact of these amendments is expected to be in the period of initial application. So far it has concluded that the adoption of them is unlikely to have a significant impact on The Ombudsman's results of operations and financial position.

Glossary of Terms

Complaint

A complaint is a specific allegation of wrong doing, unreasonable action or defective decision or procedure which affects and aggrieves the complainant.

Consent from Complainant

To facilitate The Ombudsman's processing of a complaint, the complainant is required to give consent for: The Ombudsman to copy his/her complaint and any other information, including his/her personal data, to any party concerned; and any party concerned to provide the complainant's personal and other relevant information to The Ombudsman. The complainant may, by stating his/her wish clearly, withhold consent to the disclosure of his/her identity to the party under complaint. However, in this circumstance, The Ombudsman may not be able to process the complaint fully or at all.

Direct Investigation ("DI")

This is an investigation initiated in the public interest even in the absence of complaint and generally on matters of a systemic nature or wide community concern.

Direct Investigation Assessment

This refers to the preliminary examination and assessment on a potential subject for direct investigation. Where our direct investigation assessment finds no significant maladministration or the organisation concerned has made proactive improvement, we will not initiate a direct investigation. We will conclude our study and offer our findings to the organisation. Where appropriate, we make recommendations for improvement.

Enquiry

An enquiry is a request for information or advice.

Full Investigation

This refers to an in-depth inquiry, usually into complex or serious complaints, with recommendations for improvement or remedy, where warranted, upon conclusion.

Inconclusive

We classify the outcome of our full investigation into a complaint or allegation as inconclusive where, on completion of the investigation, The Ombudsman is not prepared to determine whether the complaint or allegation is substantiated or not because the evidence is conflicting, irreconcilable, incomplete or uncorroborated.

Inquiry

This is the procedure we use to handle general complaint cases, with the aim to resolve complaints more speedily. We ask the organisation under complaint to respond to us and, if we see fit, the complainant in parallel. We will examine such response, and the complainant's view on it where applicable, together with any other relevant information or evidence we have collected. We will, in conclusion, present our findings to the complainant and make suggestions to the organisation for remedy or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.

Investigation

This may be a full investigation into a complaint or a direct investigation without a complaint.

Maladministration

This is defined in The Ombudsman Ordinance. It basically means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for a person.

Mediation

This is a voluntary process carried out where the complainant and the organisation under complaint agree to discuss the complaint at a meeting or through the telephone, and to explore mutually acceptable solutions. Investigation officers from this Office act as impartial facilitators.

Outside Jurisdiction

This refers to the situation where the action or organisation subject to complaint is not within The Ombudsman's jurisdiction under The Ombudsman Ordinance.

Restrictions on Investigation

These are the restrictions on investigation under The Ombudsman Ordinance.

Substantiated, Partially Substantiated and Unsubstantiated

These are classifications of the outcome of our full investigations reflecting the varying degrees of culpability of an organisation under complaint.

Topical Complaints

These are complaints on a particular social or topical issue. They are essentially against the same action or decision by the organisation under complaint.

Unsubstantiated but other Inadequacies Found

This is the classification of the outcome of our full investigation where a complainant's allegations are unsubstantiated but The Ombudsman discovers other aspects of significant maladministration.

Withdrawal of Complaint

This is a complainant's voluntary withdrawal of a complaint. However, depending on the nature or gravity of the allegations, The Ombudsman may still pursue the case.



Complainants Charter

We endeavour to provide a high standard of service to the public. In fully discharging our duties, this Office has drawn up the following Charter:

Our Commitment

- Handle complaints in a professional, impartial and efficient manner
- Keep complainants informed of the progress and outcome of our inquiries
- Explain our decisions clearly
- Protect complainants' privacy
- Treat the public with courtesy and respect

Complainants not satisfied with our findings may write to this Office and state the grounds for a review of their cases. Any views on individual staff or our services may be directed to the Chief Manager of this Office. We will take follow-up action with professionalism and fairness.

Complainants' Responsibilities

- State clearly the issues of complaint
- Provide true and accurate information in a timely way
- Cooperate in our inquiries
- Lodge complaints in a reasonable manner
- Treat the staff with courtesy and respect

If complainants are not cooperative, the progress and/or outcome of our inquiries may be affected. In such circumstances, we will take proper actions as appropriate, such as making our decision on the basis of available evidence or terminating the inquiry.

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